

LETTER TO THE PEERS,
 FROM
 A PEER'S SON,
 ON THE DUTY AND NECESSITY OF
 IMMEDIATE LEGISLATIVE INTERPOSITION
 IN BEHALF OF THE
 CHURCH OF SCOTLAND,
 AS DETERMINED BY
 CONSIDERATIONS OF CONSTITUTIONAL LAW.

“ There is a spiritual jurisdiction and power, which God has given unto his church, and to them that bear office therein: and there is a temporal jurisdiction and power given of God to kings and civil magistrates. Both the powers are of God, and most agreeing to the fortifying one of the other if they be rightly used. But when the corruption of man enters in confounding the offices then confusion follows in all estates. . . . The church cannot be, without it have its own power, jurisdiction, and liberty but of old the papists called the truth heresy, and now some call the truth TREASON.”—*Letter from John Erskine of Dun to the Regent Mar.*

EDINBURGH:
 WILLIAM WHYTE AND CO.,
 BOOKSELLERS TO THE QUEEN DOWAGER;
 GLASGOW, W. COLLINS; PERTH, J. DEWAR; ABERDEEN, A. BROWN
 AND CO.; LONDON, LONGMAN, BROWN, AND CO.; DUBLIN,
 W. CURRY, JUN., AND CO.

MDCCCXLII.

BALFOUR AND JACK, PRINTERS.

LETTER TO THE PEERS.

EDINBURGH, *January* 15, 1842.

MY LORDS,

There are many considerations, which seem to point out the present as not an unfit time for soliciting the attention of the members of the Legislature to the unfortunate position now occupied by the Church of Scotland. Although the number of publications, which, during the last few years, have issued from the press, has been so great, as almost to exhaust every argument which can be urged upon either side; yet the merits of the question, and its real nature, continue to be but very little understood by the vast majority of those who must soon be called to sit in judgment on it.

Many causes have contributed to this effect.—In the first place, the period during which the controversy has been carried on, has been one of unusual political excitement, and many of those questions, which are accustomed to agitate most deeply the

public mind, have successively been brought before the notice of Parliament. Again, the uncertainty of the tenure, by which the late Government has for long held the reins of power, has given a keenness and interest to the contest for political ascendancy, which has been well calculated to eclipse all consideration of less exciting, though equally important, matters. Besides these causes of an accidental and temporary nature, there have been others—perhaps quite as powerful—inseparable from the nature of that Church of whose affairs we speak, which have tended to confuse or destroy the general right understanding of them. Her constitution is peculiar ;—it is unlike that established in England ;—and it is removed from the observation of those who have not paid peculiar attention to the events of Scottish history.

Now, my Lords, of all these causes, some have ceased, and the others should not be allowed to operate. A government has succeeded to power, strong in the confidence of a very decided majority of the people of this country, and perhaps stronger still in the talents and capacity of the individuals of whom it is composed. The late feverish excitement has in a great measure subsided ; and the nation appears for the most part to be waiting with more of hope than of anxiety for the measures which are to be proposed at the ensuing meeting of the Legislature. There is time to look around into the various interests and evils which require adjustment or removal ; nor, amidst all the innumerable and complicated difficulties presented in the management of a great commercial empire, must the dangers which threaten its more fundamental institutions, be forgotten or unmet. That such is the rank held by the Church of Scotland, is a fact which

seems to be very generally overlooked ; though it is but a few years ago since we heard it included, by the Sovereign when mounting upon the throne, in that solemn catalogue, all whose items the constitution called upon her to care for and protect. Yet this great national Institution, which the Sovereign and the Legislature are alike bound to maintain and to defend, has been for some time assailed by dangers—increasing in the direct ratio of their continuance,—without any very great interest or alarm being excited within the walls of Parliament.

To what can this be attributed ? is a question which naturally occurs, but is not so easily answered. I believe, however, that one cause is to be found in the nature of the representations which have been made in your Lordships' House, by the Earl of Aberdeen and others, as to the motives and principles of the Church of Scotland. It were to be wished that that noble earl had treated of so important a subject with a little more impartiality, and a little less violence, and that the spirit of angry crimination had found less place in his orations. But it is not the object of this Letter to animadvert upon the language used either by the Earl of Aberdeen, or by any other peer in your Lordships' House. I shall only observe that, when the safety of such an Institution as the Church of Scotland is concerned, it is the duty of every member of the Legislature to endeavour to form an opinion of his own, as to the course which the interests of the country require it to pursue. The view which the Earl of Aberdeen has adopted in regard to this question, has perhaps been more strongly stated than adequately defended ; but at all events, it is of so startling a nature as to demand inquiry ;—the more so, as another noble Lord, as intimately con- 83 + 88

nected with Scotland, and of the same political opinions, has adopted a view directly opposite. The one has represented the clergy of Scotland as being urged on by some democratic mania, to set at defiance all the restraints and authority of law, whilst the other has represented them as engaged in a just defence of privileges which constitutionally belong to them. Whichever of these views be correct, it is certain that the position in which the Church of Scotland is now placed, in relation to the civil law, cannot be long maintained, without involving the destruction of the Establishment. And as the Legislature is bound to maintain that Establishment in its original integrity, not less by the solemnity of a national engagement, than by the most obvious considerations of political advantage, it becomes a question of the deepest interest, and one which imperatively demands your Lordships' attention,—whether the difficulties and dangers in which that Institution is involved, are so distinctly attributable to the unjustifiable conduct of its own members, as to free the Legislature from all the responsibility of its fate,—or whether, upon the contrary, these difficulties and dangers can be so distinctly traced to a state of law which is “at variance with the spirit of the constitution,” as to place the Legislature in debt to the Church for the alteration of the interfering enactments.

This is the great practical question which your Lordships, and the other House of Parliament, are now called upon to consider and determine; and which, if canvassed in the spirit befitting so grave discussion, might long ago have been settled as the cause of truth demands. There perhaps never was a controversy in which the “*wrath of man*” has so vividly displayed its legitimate results, or one in

which such an amount of empty declamation has passed current for solid argument. By all sides have these great errors been committed,—not less by those who have condemned the church for “*disobedience to the law*,” without ever attempting to prove that the constitution recognises any power in civil law to bind her conduct *in those matters wherein she is said to have disobeyed it*,—than by those who have endeavoured to defend her position by strong assertions as to the divine right possessed by the people to exercise a veto in the appointment of their ministers. But to your Lordships’ House, if to any quarter, I may appeal for a calm consideration of such a question, more especially when I remember the nature of that party to which the majority of your Lordships belong, and which is now possessed of the helm of public affairs. The favourite motto of that party is “The integrity of our institutions in Church and state;” and it may naturally be expected, that, when that “integrity” is in danger, *you* will not fail to use all just endeavour to maintain it.

Much will have been done towards establishing the propriety and necessity of an alteration in the existing law, when those objections have been refuted, which represent the adoption of such a course as involving a compromise of constitutional principle upon the part of the Legislature; for in the arguments, which shew the injustice of these objections, there is much that goes farther than the establishment of a mere negative,—much that will serve to fortify a directly opposite conclusion.

There are many who would have no objection to an alteration of the law, for the sake of satisfying the wishes of the Church and people of Scotland,—even

though such an alteration might not, in their opinion, be of any intrinsic good; but who assume an attitude of uncompromising resistance to any change, from a belief that insubordination and political delinquency have marked the manner in which these wishes have been expressed and acted upon by the Assemblies of the Church. We may daily hear this state of feeling expressed in the common declaration which has been so often made, both in and out of doors: "The law should not be altered to please those who refuse to obey it so long as it remains unchanged; for, in the first place, this would be giving way to lawless agitation; and, in the next place, there is no security that even such concession would be productive of the result which it is intended to secure;—there is no security, that further change might not be as unrighteously demanded to-morrow, as it is to-day."

Such arguments as these are but too specious; and in combating them, the Church labours under great but unmerited difficulty,—a difficulty which is great, because it chiefly arises from an *ignorance of facts*, upon the part of those who are too well pleased with the conclusion to which they have come, to spend much trouble in inquiry; and unmerited, because, when these facts *are* known, they are sufficient at once to vindicate her from an accusation which is unjust in proportion to its weight. *It is known*, for instance, that a rule laid down by the Church, for the regulation of the conduct of her own members, has been declared, by the Supreme Courts of Law, to be at variance (in a certain sense) with the statutory provisions which relate to Patronage; and the fact is immediately translated into the assertion, that the Church has disobeyed the law. But it is *not* known

that the sense, in which it is true that her rule is at variance with these provisions, is widely different from that which can possibly justify the term of "disobedience" being attached to her proceedings. It is *not* known,—or, if known, the knowledge is not taken into account—that the more fundamental principles laid down by the constitution, respecting the Church's powers and privileges, *not only necessarily imply* her freedom to disregard the provisions of the law of Patronage, *in that sense in which alone they have been disregarded*, but have actually *anticipated the event of that freedom being exercised*, and have provided a remedy, whereby at once the intentions of that law are fulfilled, and the liberty and privileges of the Church are left as unshackled as before. That this is the true statement of the case, is, as I hope to convince your Lordships, capable of the most absolute demonstration. In order both to illustrate its meaning, and to prove its truth, it will be necessary to treat separately of two different subjects.

I. I shall endeavour to lay before your Lordships a distinct view of those fundamental declarations and principles of the constitution, of which I have just asserted, that not only do they necessarily imply the freedom of the Church to disregard the provisions of the law of Patronage, in that sense in which alone they have been disregarded, but have actually embodied (in expectation of this freedom being exercised) a remedy, whereby at once the intentions of that law are fulfilled, and the constitutional powers and privileges of the Church are left as unshackled as before; and,

II. I shall direct your attention to the nature of

lay Patronage, as it has been regulated in Scotland since the Reformation, and as regards its constitutional relationship to the powers of ecclesiastical control.

I. I begin by observing, that amidst all that has been said or written by the opponents of the Church's cause, we never see, in any of their pamphlets or orations, a denial of that statement (when made in general terms) which asserts *that the constitution has recognised in the councils of the Scottish Church full power to regulate all spiritual matters.*

At the outset of the controversy, the whole Moderate* party were *en masse* loud in their declarations, and doubtless most sincere, that the freedom of the Church in matters spiritual was a principle which *they* were as anxious to maintain as those whom they taunted with being so wrong and boisterous in the manner in which they endeavoured to assert it. But gradually, step by step, as they have been led on to sanction proceedings which are wholly irreconcilable with such confessions,—they have been less frequently mentioned, and are now rarely heard. But were such admissions still made in terms as strong as ever, it would be extreme credulity in any friend of the Church to rest upon them as the basis of his reasoning. Admissions, unless couched in language so strict as to fix their meaning with precision, are often more dangerous to him to whom they are made, than to him who makes them. Not unfrequently, it is far more easy to make fallacies appear reconcileable with true, but vaguely admitted, pre-

* It may be as well here to state, that throughout this Letter I shall use this term to designate all those who now oppose the Church's views, and unite in the accusations of disobedience: It has every recommendation, except that of being descriptive.

mises, than to meet, in the face, the truth of these premises themselves. If the admissions made by the Moderates had been conveyed in language more definite, and more strictly formed upon the model of those great constitutional laws, to whose authority they have been yielded, it would not have been so simple a process to dissipate altogether their practical significance, and mould them to positions with which they are really incompatible. If the compressive but well defined expressions used upon the tables of the constitution, had been kept more constantly before the public eye, it would not have been possible, by a series of desultory and bottomless arguments, to have familiarized the minds of many with a statement so directly at variance with the whole spirit of the laws, as that recently made in an influential magazine, which graciously allowed, that the Church possessed all the power which the Court of Session might permit her to retain, but no more. But of this, judge for yourselves, my Lords; for to the records of the constitution the appeal must go, and that appeal must be decisive.

In establishing a conclusion respecting constitutional principles, there can be no *demonstration* which does not rest upon, and is not justified by, the *ipsis-sima verba* in which they may have been embodied by the Legislature;—nor, upon less secure foundation has the Church any cause to build. But the connection between, and the order of, those events which occasioned the statutory recognition of the Church's principles,—the nature of the emergencies which the enactments in regard to them were intended to meet,—the doctrines which they were intended to subvert,—a knowledge of these may serve greatly and usefully to

illustrate the meaning and significancy of the words themselves. Such grounds of inference can never justify a meaning which the expressions of the Legislature do not obviously bear; but they may and do throw a light upon their aim, which is as interesting as instructive. I shall accordingly lay before your Lordships a rapid sketch of the principal events connected with the history of the Church, which occurred between the years 1560 and 1592;—a period which, though short in the computation of a nation's age, witnessed the rise of the Church of Scotland, and her progress to a station identical with that which she now occupies.

Before the year 1567 we can hardly view the Church of Scotland in the light of an Establishment;—because, although the doctrines of her faith, embodied in a “Confession,” had in the year 1560 received the sanction of a numerous and united Parliament, it was not till 1567 that this parliamentary sanction was constitutionally completed by the Sovereign's assent, nor was it till that year that even any part of the system of policy adopted by her office-bearers received any national acknowledgment. But the seven previous years are in many ways instructive; for the acts of 1567, though, as before said, the first which can be considered as having placed her in the rank of an Establishment, speak of the Church as a *pre-existing* body, and mention almost in the character of *laws* those expressions of her own unsupported authority, *which concerned the regulation of her internal government*. In order, therefore, to understand what these acts provide for, we must know the nature of the ecclesiastical constitution to which they thus refer.

It was in 1560 that the struggle in which the supporters of the reformed doctrines had been long en-

gaged was brought to a successful close, and Scotland, as a nation, subscribed itself to the great principles of Protestantism. This it did in the Parliament which met immediately after the close of the war, by ratifying and adopting the "Confession of Faith," drawn up by those ministers of the reformed religion, who had exercised spiritual functions during the period of its adversity, and whose compendium of its doctrines were naturally agreed to when it became predominant. But those ministers had higher ideas both of the duties and authority of their own office, and of the obligations under which the people of the Reformation lay, than to encourage them in the opinion, that, when they had made public profession of its faith, they had discharged them all. They urged on them a position which appears but reasonable; that when they had given national adherence to its creed, it was their duty also to give national support to its ministers and teachers, and to the spiritual authority which, as such, they exercised. And here it may be well to state the view which they adopted upon this subject. It is easily defined. The fundamental principle upon which they proceeded,—a principle to which their successors adhered through every period of difficulty and trial, with a constancy which was ultimately crowned with success,—was, that the internal government of the Church, the power of legislation in all that concerned its rites, ordinances, and government, was vested, by virtue of their divinely appointed office, in the Assemblies of her clergy. They denied the right of civil power to coerce them in the discharge of their sacred functions, and declared that this was a freedom, in which they conceived their duty to the Great Head of their religion required them to stand fast.

According to these views, a plan of ecclesiastical polity, drawn up by some of the reformed clergy, was adopted and confirmed by the first General Assembly of the Church. Of the various regulations therein contained, for the organization and discipline of her internal economy, it would be out of place to speak here. It is necessary to observe, however, that its contents were of two distinct kinds. A great part of it was addressed to the Parliament, and could not be carried into execution without its assent;—or, in other words, a great part respected the *establishment*, not the *internal polity* of the Church; and the adoption of its plans upon such subjects depended, of course, upon the public sanction. This sanction was not, at the period of which I now speak, awarded to them. In order to put them in execution funds were requisite; and this was an effectual barrier in the eyes of those who seemed to think that the chief fruit of the Reformation, was the opportunity it afforded them of seizing upon the rich revenues of the fallen hierarchy. But all the provisions of the “Book of Discipline,” which affected *the spiritual offices and internal government of the Church*, were immediately carried into practical effect, as not being dependent upon other authority than that of the Assembly by which it had been approved. Be it moreover observed, that this “Book of Discipline” is authoritative, both as to the views and practice of the Church when *unestablished*, and of the Church when connected with the State, *in all those matters wherein the independence of her authority was not affected by that connexion*. How far that independence was affected by the acts of 1567 your Lordships may judge, for to their provisions I shall now proceed; and it is important to notice both the position in which they

placed her for the future, and that which they acknowledged her to have held during the period preceding.

At the meeting of Parliament in 1567, the acts of 1560, in favour of the reformed religion and its "Confession," were finally confirmed, and received the royal assent. Farther acts were then passed declaratory of the Reformed Church, according to its Confession, being the only religion established in Scotland; and it was provided that no king should thenceforth be admitted to the exercise of authority, without having previously taken an oath to maintain the Protestant establishment. One of the most remarkable parts of the enactments of this Parliament,—being that which best illustrates the power it yielded to, or rather acknowledged in, the assemblies of the Church,—must be reserved for the consideration of the second branch into which my argument is divided; for to this it more properly belongs. But it will suffice to mention here, that one of the most important items of the internal jurisdiction of the Church was secured to her in the important clause, in which it was ordained "by our sovereign Lord, and dearest Regent, and three estates of the present Parliament assembled," "*that the examination and admission of ministers within this realm be only in the power of the Kirk.*"

To complete the picture (so far as the above-mentioned omission will allow) of these enactments as bearing upon the subject of discussion, I would direct your Lordships' attention to a remarkable feature in their general scope and character, viz. the total want in them of any specific information *in regard to the economy and discipline of the Church*;—evidently showing (since the Church was the immediate subject of attention) that *for every thing connected with*

these points, her own Assemblies, not parliament, must be applied to. To illustrate: They speak of “Superintendents;” but in doing so they suppose a knowledge of those rules which the Church had laid down regarding them, and to these we must turn for the nature of their office, and the functions which they were intended to discharge. They speak of the “General Assembly;” but for its nature and constitution we must again turn to the laws and practice of the Church. They speak of the “induction” of ministers; but for all the principles (except, as we shall afterwards see, the right of mere prior nomination) they specially refer us to the Church and to her representative Assembly.

But soon after this settlement the scene was changed. It was during the period which elapsed between 1567 and 1584 that some of the most instructive transactions of Scottish ecclesiastical story occurred. It was a period during which the prerogatives and freedom of the Church were attacked by all the zeal, first of the regent and a party of the nobility, and, latterly, of James VI. himself. The motives which influenced the conduct of the former, history has now sufficiently unfolded, but it would be irrelevant here to dwell upon them. It matters not at all, in the prosecution of this part of the inquiry, to examine into the nature of the considerations which determined these men in favour of that species of prelacy, which for a time they succeeded in introducing. But it is most useful to observe their *modus operandi*; and I know not, my Lords, one single epoch of the history of our Church, including those of her most favoured fortune, and greatest triumph, which more powerfully illus-

trates the nature of her principles, than this her moment of greatest oppression.

In the most successful attempt of these secular powers to interfere with that which, neither by the laws of the Church or of the kingdom, in any way belonged to them, they did silent but effectual homage to the legality of the authority which they were endeavouring to overthrow. Like the patricians of ancient Rome, who found it best to fight the battles of aristocracy within the plebeian assembly of the Tribes, so did these men find it to be their safest and most effectual plan to fight the battles of prelacy within the walls of the General Assembly. But though, by the use of means which were familiar in those days, and in packed Assemblies, they for a while succeeded,—only a few years elapsed before the whole structure which they had such trouble in rearing, was destroyed by the free exercise of that authority, whose corrupted voice had been made the instrument of its erection. By the vigorous and unrelaxing efforts of those singular men, who were at that time, in every sense of the word, the greatest in the nation, the Church had been well-nigh restored to its former state of regular and efficient organisation, when James VI., having ended his minority, assumed the reins of power.

The ideas which this prince entertained of regal authority were as high as his influence over the haughty barons of his kingdoms was in reality precarious and weak; and as he almost immediately fell under the power of those French relatives of the house of Guise, whose object was the overthrow of the Protestant Church, his mind was soon directed to such measures as might pave the way for this end, whilst they were at the same time suited to the genius of his own opinions. From this state of things,—favoured by

the political events of that stormy period,—proceeded the “Black Acts” of 1584.

Although, my Lords, these acts are now only known amongst the “things which were,” and have long since ceased to influence the constitutional principles of this country, they are yet worthy of much attention, as serving greatly to explain the nature and import of their more worthy successors. The individual events of history, when taken by themselves, however great the interests which, as such, they may have affected, will often fail to convey those important lessons, which may readily be deduced from them when they are taken in connection with those other events,—in themselves perhaps of minor consequence,—which preceded, accompanied, or followed them. When told that in 1584 the Presbyterian Church was overthrown,—in so far as acts of parliament could effect its overthrow,—we might be tempted to pass on to a more auspicious period for a knowledge of her principles—a period when they were publicly supported and openly declared. But this would be opportunity lost. Since the enactments of 1584 were specially directed to the destruction of the Presbyterian establishment, it is most important to know the nature of the views which, in order to effect this end, it was necessary for them to embody and lay down, as opposed to those of the Church, at whose overthrow they were aimed. Nor should it diminish our anxiety to enquire into and know their nature, when we learn that, upon the re-establishment of Presbytery, it was found requisite to abandon and repeal their provisions as cutting at the very root of all those principles upon which such re-establishment could be firmly built. It *does* throw great light upon the nature both of the Establishment which preceded, and

of that which followed them, when we know that the acts of 1584 were *directed to the destruction of all spiritual independence*, that, as the antipodes of the doctrines they were intended to supersede, they *made all power ecclesiastical flow from, and be centred in, the king*; and that all the *Assemblies, to whom the government of the Church had formerly been committed, were forbidden, under high pains and penalties.*

It was from the state of degradation and overthrow, to which these acts reduced the Church of Scotland, that she was rescued by the counter-enactments of 1592, which still form the ground-work of the Establishment. Political events, which in Scotland have always so deeply affected the welfare of its Church, together with other causes, contributed to bring about this change, by producing a reconciliation between the presbyterian clergy and the king. The result was the acts of 1592, to whose provisions I now beg your Lordships' attention.

The acts of 1592 open with a ratification of all acts "anent the liberty and freedom of the Church;" and they are declared to have full force and effect in all time coming, as if there recapitulated. They then ratify and approve the "General Assemblies *appointed by the said Church*;" and declare it to be lawful for her ministers, "every year at least, and oftener, *pro re nata*, as occasion may require, to hold and keep General Assemblies." They then, in the same strain, ratify and approve the constitution of the Church, as governed by provincial, synodical, and general Assemblies, "with the whole jurisdiction and discipline of the said Church, agreed upon by his Majestie, with certain ministers convened to that effect." The tenor of this agreement is next conveyed to us under the separate heads of "Matters to be entreated in

Presbyteries and in Synodical Assemblies.” Under these heads the Church’s own rules are quoted, as laid down in a second Book of Discipline, which had been adopted by ecclesiastical authority some years before. Many of the acts, which militated “against the liberty of the Church, jurisdiction, or discipline thereof,” are then enumerated and specially repealed,—amongst others, the “Black Acts” of 1584, which have been above mentioned. In reference to them the Legislature uses these remarkable words,—They “shall no ways be prejudicial, nor derogate anything to the privilege *which God has given to the spiritual office-bearers of his Church* concerning heads of religion, matters of heresy, excommunication, *collation, or deprivation of ministers* ;” and in accordance with this declaration of the fundamental principle upon which the Establishment was to be conducted, it proceeded to declare the “full power” of the Assemblies of the Church, to “put order in all causes and matters ecclesiastical,” “according to her discipline.”

It now, my Lords, only remains to mention such acts, as at subsequent periods were added to those passed in 1592.

Between the years 1592 and 1640, the Church was again subjected to the tyranny of external power; and as before, her own Assemblies were made to lift their hands against her. It would be useless to follow here the history of that unhappy period. Suffice it to say, that the same constancy of adherence to the great principles of her constitution distinguished the conduct of her members, and that in 1640 they were again publicly restored to their former ascendancy. The Parliament of that year,—having declared its conviction that the main evils, which had so long oppressed the country, were attributable to the “establishing of a tyrannical power over

the Church," without warrant or direction from the General Assembly ;" to the "overthrowing of the whole discipline and government of the Church by Assemblies," and to the confounding of the essentially distinct spheres of spiritual and temporal control ;—proceeded to enact, that for the future "all questions about religion and matters ecclesiastical be determined by the Assemblies of the Church, and that for the preservation of religion, and preventing all such evils for the future, General Assemblies rightly constituted, as the proper and competent judges of all matters ecclesiastical, hereafter be kept yearly, and oftener, *pro re nata*, as occasion may require." In short, the Church was again placed upon her former basis, from which it was again subverted by the proceedings of the unfortunate princes of the house of Stuart. After their political extinction, and the accession of the house of Orange, the work was, for the last time, to be begun anew.

The "declaration and claim of right," made by the estates of the country, was followed by the act of June 7, 1690, by which the presbyterian Church was finally established, and her government recognised to reside in the various assemblies of her clergy.

The wording, my Lords, of this act is so strong, and the solemnity, with which it treats the subject of the Church's spiritual independence, is so remarkable, that it seems well to quote it to your Lordships, although it is indeed but a repetition of the principles, which had been established at former periods, and little else than a ratification of the various statutes which have been previously mentioned. The preamble opens thus, "Our Sovereign Lord and Lady, the King and Queen's Majesties and three estates of Parliament, conceiving it to be their bounden duty, after the great

deliverance that God hath lately wrought for this Church and kingdom, *in the first place, to settle and secure therein the true Protestant religion according to the truth of God's word, as it hath been of a long time professed within this land, and also the government of Christ's Church within this nation agreeable to the word of God, and most conducive to the advancement of true piety and godliness, and the establishing of peace and tranquillity within this realm, &c., do establish, ratify, and confirm the Presbyterian Church government and discipline, that is to say, the government of the Church, by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies," &c. &c.* The acts of 1592,—containing the memorable declaration, that the doctrines of civil supremacy which had once been law, should in future be “noways prejudicial to the privilege which God has given to the spiritual office-bearers of His Church, concerning the collation and deprivation of ministers,”—were thereby re-enacted and declared to be the basis of the Establishment. The “Confession of Faith,” which had been for some time the authorised compendium of the Church's doctrines, was then *solemnly ratified, and embodied among the laws of the kingdom.*

The Confession, my Lords, which thus forms an authoritative portion of our constitutional law, lays down, in language strong and well-defined, that principle of spiritual independence, which you have seen so amply recognised in the previous statutes. It declares in similar and emphatic language, that “the Lord Jesus Christ, as King and Head of his Church, hath therein appointed a government, in the hand of Church officers, distinct from the civil magistrate.”

It only remains now to say, that at the treaty of

union between England and Scotland in 1707, the integrity of the Church of Scotland, *as then established*, was made “*an essential and fundamental condition of the said treaty.*” The previous acts in its favour were declared to be of perpetual obligation, and it was provided that “no alteration or derogation” should be in future made to the worship, *discipline, or government of the Church* of this kingdom, as now by law established.”

I have now, my Lords, sufficiently for my purpose, laid before you the nature of the principles upon which the constitution proceeds, in reference to the powers and privileges of the councils of the Scottish Church. In doing so, I have referred to no doubtful source, nor leant upon any vague assertion. I would here entreat your attention to the solidity of the basis upon which the Church's future argument proceeds, and to the standard by which the contending parties must be judged in a statesman's eye. It is said that the Church has committed rebellion against the law,—a charge which is of course refuted when the truth of the assertion has been proved, “that the fundamental principles of the constitution not only necessarily *imply* her freedom to disregard—in the only sense in which they have disregarded—those statutory provisions which it is said she has *disobeyed*, but have actually, in expectation of this freedom being exercised, embodied a remedy whereby at once the intentions of the statute are fulfilled, and the powers and privileges of the Church are left as unshackled as before.” It is now time to ask, how far the previous part of this letter has afforded proof of the accuracy of this statement. No proof has been afforded; but the means of proof have been supplied. We now proceed to

the scrutiny of that power against which the alleged rebellion has been committed, with a full and certain knowledge—because a knowledge derived from authoritative document—of the nature of that other power, which is accused of the rebellion. We go forth to the inquiry concerning the law which the Church is said to have *disobeyed*,—knowing what the constitution has declared in regard to the extent and character of her power; knowing that, according to the view which it has adopted, and upon which it proceeds, the “privilege” of her “office-bearers” to exercise rule in all that concerns “heads of religion, matters of heresy, excommunication, *collation, and deprivation of ministers,*” is inherent and of divine authority; and knowing, therefore, that if the law of Patronage concerns her conduct *in any one of these items*, the principles of the constitution *do* imply her freedom to disregard its provisions, and, if consistent with themselves, *must* provide *some* means whereby the intentions of that law may be fulfilled without trenching upon a freedom of so sacred a description.

To give this inference the position of an established truth, is the part of the second branch of our inquiry,—that which examines the history of the law of Patronage, and the intentions of the constitution in regard to it.

To this, my Lords, I should now proceed, did it not seem to be here advisable to bestow a few remarks, in exposing the manner in which the distinct and forcible words of the various statutes I have laid before you, have been evaded and thrown overboard, in all the reasonings of the Moderate party. In the beginning of this letter, I alluded to and pleaded as an excuse for detaining your Lordships with *Acta Parliamenti*, the

danger of accepting for the foundation of one's argument any vague admissions as to "spiritual independence," which, not being founded upon the *ipsissima verba*, to whose authority they are yielded, may be easily made to bear any meaning, or no meaning at all, as occasion may require. A fair and candid examination of this subject is the foundation-stone of the Church's position. Well do her opponents know this ; and most ingeniously do they contrive to avoid every tangible attempt at proving that upon which the justice of *every* charge of disobedience *must* rest, viz., *a subordination of position in the power which has disobeyed, to that against whom the disobedience has been committed.* I shall now give your Lordships some specimens of the various ways in which they get over this essential preliminary, without hazarding the dangerous experiment of appeal to document.

They may be all comprehended under one of two classes,—the first and most common of which consists of broad assertions, or sweeping inferences, in which the undoubted fact of the Church having received certain advantages from the state, is so expressed as to convey a most false impression,—to conceal *that other fact*, which is far more important, that *her principles have also received its sanction*, and to lead the judgment astray by statements which, if not literally—at least in the sense which alone can justify the conclusion,—are absolutely false. An excellent example of this sort of reasoning is furnished in the pamphlet of a person who holds rather a conspicuous station amongst the ranks of the Moderate clergy. "It is a contradiction in terms," says this close reasoner, "to allow that the Church is established by the State, and yet assert that she is independent of the power which has established her." There could hardly, my Lords, be a better

instance of genuine—though perhaps unintentional—sophistry ; for be it observed, the whole force of the argument depends upon a word being taken in one sense in the premises, and in another in the conclusion. It is admitted that the Church is “established,” and upon this is built a consequence,—legitimate only if that word is used in a sense *directly opposed* to that in which it can possibly be admitted as correct, without violating the express declaration of the constitution. For what is that declaration ? Why, this : That the authority of the Church in “matters ecclesiastical” in the “*government of the Church*,” and specially in the “*deprivation and collation of ministers*,” flows from *divine authority*, and is *therefore* not amenable to civil magistrates. *That* in which the Church is thus independent of the State was *not* “established” by civil law, but is, by its own confession, inherent in the sacred office.

There is another instance of the same sort of fallacy, which, from its continued occurrence, it would be improper not to notice. Every day may we hear the assertion made—“As an Establishment the Church is bound to obey the civil law.” But never, by any chance, do we hear this assertion attempted to be proved *by reference to those records of the constitution*, which tell us what the Church is bound to do “as an Establishment.” The phrase seems to proceed upon some great general law, by virtue of which the Moderates have discovered that connection with the State *necessarily* renders subservient, or destroys, those powers of internal government, which, before the formation of such connection, may have had an independent existence. The easiest way of overcoming this formidable obstacle, is simply to prove an exception,—a sort of *alibi* from the province of this inflexi-

ble generality; and this is very easily done, by recapitulating the words of the Legislature, which I have now brought often enough before your Lordships. They conclusively demonstrate, that the independence and supremacy of the Church in spiritual matters,—so far from being necessarily destroyed by connexion with the State,—may be, and have been, ratified and secured, both generally and in specified particulars, by the very acts which constitute her an Establishment.

But there is yet another style of Moderate argumentation more dangerous in proportion to its greater plausibility. It has two chief features; first, The number and boldness of the inferences drawn from the “*terms*” or *conditions*, upon which the Church has received the benefits of an Establishment; and, secondly, The total *disregard* which these inferences exhibit of *every one principle* upon which the said “*terms*” *actually* proceed. One example may suffice: the better, as it is furnished by an article in an influential Magazine, which produced considerable sensation in the Moderate world.

In Blackwood’s Magazine for August last, there appeared an article duly headed and entitled “Non-Intrusion.” It began by assuring its readers, that “Non-Intrusion” had really very little to do with the subject to which it was directed, seeing that *that* question had been long since merged in one of far more vital interest. The rest of the article is chiefly directed to the “personalities” of the question; and it is much filled with well-turned periods, and clever sayings, intended to show the full enormity of the conduct of those ministers of the Church who venture to exercise and defend those privileges which the law considers to be the birthright of their office, without having previously retired from within her walls. All this does very well when there is a lack of firmer materials where-

with to build. Such “practical remarks” often serve a most useful purpose. When well introduced, and skilfully arranged, they are frequently mistaken for those solid arguments from whose previous success they could alone be legitimately applicable. All such previous conclusions are, in the article of which I now speak, asserted and assumed, with a boldness which serves to veil their fallacy. This, however, is easily detected ; for I would entreat your Lordships to attend to the manner in which this writer sweeps over the ground which is hollow beneath his feet. “The question here,” he observes, with an air of fairness, and with much truth, “is with a statutory established Church, and *all* that we have occasion to ask, *relates to the terms upon which it has been established.*” So far all is right ; and to these “*terms*” the Church is most willing to refer. But how does this writer begin the reference of which he speaks so boldly ? How does he answer the *only* question which he has to ask ? “The Church,” he proceeds, “as an Establishment (the old phrase) is the creature of the State.” The latter words being placed between inverted commas denoting quotation. But where, my Lords, do you suppose this quotation comes from ? After so grave an introduction, it might have been expected that the inverted commas were the representatives,—if not of some document authoritative upon the subject of the “*terms*,”—at least of some disintegrated act of Parliament, from which the words had been extracted. But no ! The next sentence runs thus : “Such we are glad to see are the sentiments of the *non-intrusion Lord Advocate !*” This is indeed a descent ; and it is sufficient to allay in the mind of the Church’s supporters, any momentary alarm which might be occasioned by the terrible insignia of quoted

authority. The Church may consent to weigh in a balance those words of the Legislature which speak of her as “an Establishment” in so very different terms from those even of the “non-intrusion Lord Advocate.”

But, my Lords, there is something in this passage calculated to excite very different feelings than those of ridicule. I know not upon what occasion the learned gentleman, here quoted, used the words thus imputed to him. If they were used at all, it is extremely probable that they were meant for a very different purpose from that to which they are here made subservient; but however this may be, it is sufficiently obvious what the purpose is, which the writer in “Blackwood” intended his name to serve. A reader not well acquainted with the subject would immediately conclude, from the passage referred to, that the principles contained in the quoted words, and those legitimately deducible from them, being sanctioned by a “*non-intrusion*” Lord Advocate, *were admitted* by the supporters of the Church’s cause. This, my Lords, is the miserable expedient adopted by the article in question to cover over that faulty assertion, which, being augmented in significance at every fresh statement, is made at last to overthrow every established law of the constitution in reference to the Church, and is yet passed over as *an admission* from those who support the propriety of her position. It is hardly possible to help using, towards such a method of reasoning as this, the language which its author has so unjustifiably used towards some of the best and greatest members of the Church, and say, that “in the ordinary affairs of life, it would deserve no other name than that of downright dishonesty.”

From every such attack as those which I have

been now considering, the Church's position receives a more illustrious vindication ; and it is well to call upon your Lordships, in entering on the second head of this discussion, to bear in mind how far the character of her cause has been illustrated by what has been already advanced,—to contrast, in short, the gross assumptions upon which her adversaries mount up their inferences, with the clear firm ground upon which she stands, when resting on the strong words of acts of Parliament. To *them*, and to them alone, I would beg your Lordships to observe, have been referred the arguments hitherto urged in these pages. I might have extended and strengthened my position by referring to the “Books of Discipline,” and other authoritative standards of the Church. These, it is true, —unlike the “Confession of Faith,”—have not been actually embodied in any statute ; and for this reason, the Moderates would deny them all authority as laws of the Establishment,—a position which, like the others assumed by that party, is singularly unfortunate ; unless, indeed, they have discovered some method of explaining that declaration of the Legislature, which confirms the “government of the Church with the *whole jurisdiction and discipline thereof*,” in a way which interferes not with their desire to condemn the *book in which that discipline is contained*. But I refrain from entering upon this ground, as there is abundance for my purpose in the Statute Book itself.

The remarkable amount of express statutory sanction, and minute legal enumeration, which has been given in Scotland to the principles of its Church is the effect of peculiar causes ; causes which are sufficiently apparent if we attend to the history of her origin and growth. I will not, however, detain your Lordships with any reference to historical details. It is enough

to say that the result was inevitably produced by the triumph of those principles which secured the Protestant succession to the throne of Britain. It is a result which renders abortive every attempt of the Moderates to establish a distinction between the principles of the Church when unconnected with the State, and those which are in force and to be respected in her present situation. The Church has declared, *and the constitution has adopted the opinion*, that her government resides exclusively in the hands of her spiritual office-bearers; and farther, that this separation of jurisdictions is not a mere result of human expediency, created and liable to be cancelled by human laws, but is one of divine appointment, and essential to the well-being of both.

Having dwelt, perhaps, already too long upon the first head of this discussion, it is now time to ask,

II. What is that law of Patronage which the Church is said to have disobeyed; and can it be said, consistently with constitutional principle that she *has* disobeyed it?

The first fact which strikes one in examining the law of Patronage, is, that it is a law which apparently assumes a power to direct the Church's conduct in *that very matter*, in which the constitution declares her to be *peculiarly independent*,—the “*collation of ministers*,” and which speaks of her Assemblies as “bound and astricted” to adopt a certain course in regard to it. It is a law, therefore, my Lords, which, when viewed in this aspect, stands in obvious contradiction to the fundamental principle of the constitution, whereby the Church is declared to have the right of unrestrained rule in the “*examination*,” “*collation*,” and “*deprivation of ministers*,” as

well as to all the various enactments which secure the full integrity of her internal government ; and thus is it a law which the fundamental principles of the constitution, respecting the powers and privileges of the Church, *necessarily imply* her freedom, *in some measure*, to disregard. When to these considerations we add the farther fact, that Patronage existed in conjunction with, and was specially retained, in those very acts of the Legislature which most strongly secure the independence of spiritual power, we are led irresistibly to the conclusion, that this must be but a surface view of Patronage, and to believe in the existence of some “provision whereby at once the intentions of the statute may be fulfilled, and the powers and privileges of the Church be left as unshackled as before.” In this expectation we shall not be disappointed. Two such provisions have been at different times adopted, which vary considerably from each other. The first of these is to be found in the act of 1567, which has been before brought under your Lordships’ notice ; and the latter is the one adopted by the Parliament of 1592, being that which now constitutionally regulates the law of Patronage.

Your Lordships will remember, that the first great enactment which placed the Church of Scotland in the position of an Establishment, that of 1567, amply secured and implied her freedom to exercise the power of internal government. This is still more clearly illustrated by the nature of its provisions respecting Patronage, to which it will be well here shortly to refer. In the clause which immediately succeeds that in which it is declared, that the “examination and admission of ministers be only in the power of the Church,” this act makes the following reservation : “The presentation of lay patronages al-

ways reserved to the just and ancient patrons." This, my Lords, is a salvo, which, if Patronage had been defined as a right existing in any body of men, *other than the office-bearers of the Church, to appoint and finally determine upon* those who were to fill the sacred office, was obviously destructive of all that freedom, which, in the same statute, they were declared to possess in the "examination and admission of ministers." But, my Lords, Patronage was not so defined; for mark the nature of the succeeding regulations. After enacting, that, if the patron should fail in the duty of presenting a person "to the superintendent of the parts where the benefice lies, or others having commission from the Church to that effect," within the period of six months, the Church might assume the right of patronage;—the act proceeds thus, "Providing that the patron present a person qualified *to his understanding*, and failing one, one other within the said six months, and the said superintendent or commissioner of the Church refuses to receive and admit the person presented by the patron, as said is; it shall be lawful to the patron to appeal to the superintendent and ministers of that province where the benefice lies, and desire the person presented to be admitted, *which, if they refuse*, to appeal to the *General Assembly of the whole realm*, by whom the cause being decided, shall *take end as they discern and declare*."

Here we see that the full integrity of the Church's power, is in the most ample manner recognised, and lessons may be gathered from these enactments worthy of being read in the present day. It is, indeed, strange to contrast the enlightened principles upon which this Parliament proceeded in regard to the "*rights of patrons*," with those of so very different a

character which are now prevalent, after more than two centuries and a half of the “march of intellect.” And it would be well for your Lordships to observe, that at a time, when the ideas of the Scottish nobility were high upon the subject of all their rights and privileges, the authority of the Church’s councils was not considered to interfere with any due exercise of Patronage, for in the same act, where the one is guaranteed, the other is stipulated to be retained. In the method adopted too, for preventing the “rights of patrons” from clashing with the welfare of the Church, the Parliament of 1567 displayed a singleness and sincerity of purpose, which, if now imitated, would brighten up the prospect of affairs. We see here no unworthy conflict maintained between principles of great national importance, and those of a more doubtful nature, which would give to private individuals a *right of property* in the ministrations of the gospel. There is no weak and impolitic attempt to shackle the freedom of conscience and of action in those who have had a great work given them to do. It seems to have been presumed, that the ministers of religion would act conscientiously in the discharge of their sacred functions; and, therefore, it was enacted, that the only appeal competent to a patron, upon the rejection of his presentee by the court or person to whom the presentation was originally directed, should lie to the superior judicatories of the Church,—to the General Assembly of the realm. By this provision, the strange contradiction is avoided, of allowing in one breath the independence of the Church’s power from all civil controul, in determining on everything necessary to the right induction of ministers, and of enabling in another the civil courts, upon appeals from patrons, to abrogate and nullify all her rules and principles in regard

to it. Patronage here stands in the character of a simple *initiative*, whose *exercise* is in all ways subject to ecclesiastical control, but whose *existence* is independent of it; and thus, it is placed in a position where it *can* be honestly said, that it is intended for the good of the Church, and calculated to promote her welfare.

But it is of more importance to attend to the next great period, at which the Legislature was called upon to illustrate and declare the principles of the constitution, in regard to the Establishment. We shall there see Patronage assuming a slightly different shade of character, though one which is still perfectly consistent with the fullness of the Church's power. By the regulations laid down concerning it in the act of 1592, it was placed upon a footing more consistent with that view which regards it as a right of property, and proportionably less so with that adopted and proceeded upon in 1567, which, while speaking of it as a "right," yet practically treats it as a mere means for promoting order and regularity in the internal economy of the Church. But it is important to observe that, even here, the line was drawn with firmness and accuracy between the limits of spiritual and temporal jurisdiction, and that the act of 1592 preserved inviolate, from any *side-attack*, the integrity of that province, which, in general as well as in the most special terms, it had previously declared to belong exclusively to the spiritual office-bearers of the Church. It provided that, in future, presentations to benefices should be "directed to the particular presbyteries;" it declared their power "to put order in all matters and causes ecclesiastical within their bounds," and to "give collation upon presentations according to the discipline of the Church." Then follows the reservation of

Patronage. "Provided," the act continues, "the aforesaid presbyteries be bound and astricted to receive and admit" all "qualified" presentees.

Now, my Lords, how does this act explain the words "bound and astricted," as applied to the conduct of the Church in the collation of ministers? Having confirmed and secured the inherent privilege of her counsels to "govern the Church," to "put order in all causes and matters ecclesiastical," and specially to rule in all that concerned "examination, deprivation, and collation of ministers," the Legislature, with great consistency, proceeds to enact, that whoever should be decided by the Church to be "unqualified," even though already placed, should, upon sentence of disqualification being pronounced, be deprived of the benefice which he had previously possessed. Then follows the proviso to which I would particularly wish to direct your Lordships' attention,—that, if the presbytery or other church court should "*refuse*" to receive and admit the presentee *even though "qualified,"* it was to be lawful to the patron (to do what?)—to *retain in his own hands the whole fruits of the benefice.*"

The footing upon which the Assemblies of the Church were placed by this enactment, taken as a whole, in reference to the powers of patrons, was one which seems to have given ample scope for the uninterrupted play of her own great laws and principles. So long as their decisions upon presentees hinged upon the *qualifications* necessary, "according to the discipline of the Church," they were to be final and decisive; and even when presentees should be rejected, *though confessedly "qualified,"* the only redress open to the patron,—because the *only* redress which the civil law *could constitutionally give to him,*—was the retention of the endowment in his own hands.

What the precise limit was, within which, by this enactment, the Church was enabled to act upon her own laws, in regard to the “induction of ministers,” *without incurring a loss of benefice*, is a point which in no way affects my argument, and one therefore which I shall not here attempt to fix. It is to *the nature and amount of the obligation*, imposed upon her by the statute, to keep *within* this limit—as illustrated by the consequences which were to follow a violation or transgression of it,—that I am anxious to direct your Lordships’ attention. It is to the meaning of the words “bound and astricted,”—when applied to the conduct of Church Courts, in those matters wherein they were declared to be absolutely independent,—as determined by the explanation given us by the Legislature itself. It is in short, to the expedient adopted by the constitution, to restrain from collision the powers of spiritual and civil jurisdiction, while yet they are brought into contact, as it were, upon the borders of their respective spheres, and issue their separate commands upon one and the same subject. *This* is the great source of instruction presented by the Act of 1592; and it is from a due consideration of it, and a just application of the principles it unfolds to her present situation, that the Church of Scotland may repel with triumph all those accusations of disobedience, which have been so ignorantly and unjustly brought against her. It is an expedient which is worthy of forming part of that constitution, which throughout the whole polity of this great nation regulates with its timely checks the motions of all its members, and subordinates to its well-ordered principles the various interests and powers with which it has to deal. Efficient in proportion to its justice and simplicity, it preserves inviolate, amidst seeming con-

tradiction, the harmony of apparently conflicting laws. All this too is effected, not by any wonderful exertion of superhuman ingenuity, but by the Legislature keeping consistent with the fundamental principles which it had itself established, and discriminating between the things which belong to civil power, and those which, to use its own expression, "God had given to the spiritual office-bearers of the Church." What the civil law had given upon definite conditions, it was concluded the civil law might take away, when these conditions were not fulfilled; but what the civil law had *not* given, it was concluded the civil law might not take away, neither impose conditions which should be *absolutely* binding upon a power which is not derived from, but independent of, itself. It is in conformity with these views that the Parliament of 1592 recognised no authority in the Law of Patronage, to coerce the freedom of ecclesiastical government in matters of ordination; and yet upheld it, by the only security which it was in its power to give it, as the usual and regular initiative in the appointment of ministers.

Nothing has been more remarkable during the progress of the recent controversy, than the total inability, exhibited by the Moderate party, of grappling with a great question of constitutional law, or comprehending the beauty and effect of a great constitutional expedient. The littleness of conception, which can understand no Church Establishment but such as subjects the concerns of ecclesiastical government to the controul of civil magistrates and civil law, is only equalled by the obstinacy which, in the face of the clearest evidence, refuses to take knowledge of the *fact*, that such is *not* the nature of *that* Establishment with which alone they have to do; and with the bold-

ness which enables them to speak of "terms," without venturing to refer to document. The objections, too, which they have urged, when forced to take notice of so dangerous a subject, against the application or existence of the remedy provided by the constitution, have been worthy of their authors. In the article of "Blackwood," which I have had previous occasion to mention, it is urged that the Church is an established one, and that the constitution can recognize no expedient which removes her from that position by separating benefice from cure, since it is its intention that they should go together.* This is an argument equal, and somewhat similar in absurdity, to that which should object against the possibility of the Commons having the power of refusing the supplies, that it is the intention of the constitution that the Sovereign should be possessed of funds, sufficient to support the dignity of the crown, and the service of the nation. Such, undoubtedly, was its intention ; but it was *also* its intention to provide a check against the undue exercise of prerogative, without actually subjecting it to *direct* controul. It may be conceded to the Moderates, that constitutional checks are not intended to be in constant and actual operation ; in as much as the extreme cases, which it is their object to meet, are not expected to form the ordinary course of things ; but it would be a stretch of concession to allow that their non-existence may be from this inferred.

But leaving these strange objections, to continue an inquiry more interesting and instructive, it will be well to examine still more closely the principles which regulate the relationship between Patronage and the

* The writer of this article goes farther, and asserts that the constitutional expedient to which I have referred does not exist ; an assertion which, being absolutely false, is in perfect harmony with the system of reasoning pursued throughout.

power ecclesiastical, not as the Moderates may choose to represent them, from their extensive catalogue of general inferences, but as we find them unfolded in the great charter of the Scottish Establishment, the act of 1592.

Whilst the Parliament of that year gave ample testimony to the sincerity of its desire to preserve the integrity of the ecclesiastical constitution which had been previously established, and to place the freedom of the councils of the Church upon a basis more secure and permanent than before, it was still its wish to retain and render compatible with these, the "rights of patrons." The rapacity exhibited by the nobles in exercising these rights, had at various times excited the indignation of the Church and people of Scotland; the more vividly in proportion as their proceedings trenched upon, and threatened to destroy, the usefulness of that small patrimony which had been left for the Protestant Establishment. Scanty and barely sufficient as that patrimony was, the Legislature seems to have been conscious of the impolicy and iniquity of allowing such a degree of power to these rights, as would enable patrons to thwart the Church in its proper and efficient disposal. Were such power given, the scenes which had occurred in the period preceding were too fresh in the recollection of the public mind, to allow a doubt that it might sometimes be most unscrupulously used. Now, my Lords, let us remark the effect of all these various considerations upon the proceedings of the Parliament of 1592; for in their result upon the law of Patronage, as regulated by it, they form a most important supplement to the views which had been adopted, and the principles which had been laid down, concerning the absolute independence of the Church in the "collation of ministers."

These fundamental principles destroyed in the mind of the Legislature, all idea of “the rights of patrons,” as referring to anything beyond the *mere civil fruits* attending the occupancy of a cure,—seeing that they could in no way extend to matters wherein the Church was inherently supreme ; whilst the considerations above stated suggested the necessity of so restricting those “rights,” *even in the concerns of benefice*, as to prevent them having the patrimony of the Church at their uncontrouled disposal.

Hence it was, that the Act of 1592 laid a most important check upon Patronage, in providing that the presentee must be “qualified,” and that too “according to the discipline of the Church,” (to whom alone legally belonged the “examination and admission of ministers”) otherwise his rejection was in no way to warrant the patron in retaining the benefice in his own hands. It was only when a presentee confessedly “qualified” should be rejected for some reason of an unusual and temporary nature, that this check was open to the patron’s adoption. The “rights of patrons,” received by this law, all the power which was consistent with the integrity of the Church’s liberty, and the due destination of her established patrimony ; but they were not permitted to infringe upon the one or to counteract the other.

Such being the footing upon which Patronage constitutionally rests, and such the relationship in which it stands to the powers of the Church, let us apply these principles to her present situation, and to the charge of disobedience with which we have specially been dealing. For this purpose the way is now smoothed. Your Lordships have seen engraven on the pages of the statute book, in no doubtful characters, those principles which necessarily imply the free-

dom of the Church to disregard a law which “binds and astricts” her to a certain course in matters ecclesiastical; and you have seen too the “provision whereby at once the intentions of the statute are fulfilled, and the powers and privileges of the Church are left as unshackled as before.” It now therefore only remains to represent distinctly to your Lordships, the total ignorance of constitutional law and principle, upon which that accusation must proceed, which represents a certain exercise of her legal and inherent freedom, in regard to the “induction of ministers” upon the part of the Church, as an act of disobedience against the law of Patronage.

The “rights of patrons” in no way concern the conferring of the spiritual office, for this belongs, and belongs *exclusively*, to the tribunals of the Church. Their power to set at nought the privileges of patrons, so far as they have regard to the cure of souls,—and this whether for reasons fixed and regular, or arbitrary and temporary,—is not only a necessary consequence of the first principles of the constitution, but is expressed, confirmed, and provided for, by the repeated declarations of the Legislature. Nowhere is this more distinctly seen than in the above-mentioned item of the Act of 1592, which,—contemplating the event of this power being exerted to an unusual extent, by the Church *refusing* to admit *a qualified* presentee,—furnishes to patrons *such* security as is consistent with more fundamental laws, against its effecting the entire overthrow of their power in the *nomination* of ministers. The law which regulates the conferring of the spiritual office, is as entirely under the authority of the Church as that which bestows the benefice is beyond it; but it was of course expected, as the ordinary course

of things, that the two should be so ordered as to act in harmony, seeing that it is only when they stand in this relationship that the Church can permanently enjoy the advantages of an Establishment. And, as it was *in her capacity of an Establishment* that the Church was to be free in the concerns of internal government, the civil law was made to follow the terms of the ecclesiastical, *so far as concerned the qualifications necessary to a presentee* ;* and, accordingly, as long as the determinations of the Church, upon presentees, proceeded upon her established principles, in regard to these, they were to be decisive in every respect, and could involve no loss of benefice.

But though it was expected that the Church should *ordinarily* act within this limit in the rejection of presentees, it was, as your Lordships have seen, anticipated, and *provided for*, that in certain cases she might move beyond it; nor was the Parliament of 1592 so ignorant of its own principles, as to view the adoption of such a course *as an act of disobedience*. The Legislature seems to have been fully aware of that which the Moderates appear to find it difficult to comprehend, viz. that *there can be no disobedience* where *there is no superior authority*; and, acting in conformity with this somewhat obvious maxim, it merely provided that *civil effect* should not follow such *erratic* exertions of ecclesiastical authority.

I shall not, my Lords, attempt to argue,—for to do so would be to depart from the object of this Letter,—whether the rule recently laid down by the Church, regulating the conduct of her subordinate tribunals in their dealings with presentees, prescribes their rejection upon grounds, which by the intentions of the Legislature under the law of Patronage, involve a

* For obvious reasons, the *onus* of placing the two laws in harmony was laid not upon the Church, but upon the State.

loss of benefice. This is a point which has been determined by the decisions of the civil courts, in their interpretation of that law, and it is one which the Church implicitly yields to their authority. *But no decision of a civil court, in its sphere of statutory interpretation, can annihilate the fundamental principles of the constitution, or level the barriers which it has set up between independent jurisdictions.* Yet must this be first done, ere the charge of rebellion against the law can be justly brought against the Church, for exerting her constitutional and independent power in the “collation of ministers.” There has been a most mischievous fallacy here in the reasonings of the Moderate party;—a fallacy which has not only involved an ignorance and confusion, as to the nature of the decisions which have been actually given by the civil courts, but a deep-seated misapprehension as to what these decisions *can* alone refer to or affect, so long as the civil courts do not transgress those LEGES LEGUM to which they are themselves subordinate. The “Veto law” may—and the Church must bow to their authority, when they tell her that it does—prescribe the rejection of presentees, upon grounds not contemplated in the law of Patronage; and the necessary consequence is, that, in every instance in which such rejection takes place, she must incur a loss of an endowment. The law which confers *the cure*, has been so altered as to cease to be co-incident with that which confers *the benefice*;—and a separation is thus liable to ensue. But the authority which regulates the one is constitutionally independent of the authority which regulates the other; and not until every one principle is overthrown, upon which the laws of this country proceed, in regard to the relation between these two powers, can the former be said to *have disobeyed* the latter in altering its rules in regard to the “collation of ministers.”

When such, unfortunately, comes to be the state of matters, some method must be adopted of again reconciling them to each other, otherwise the Establishment must be gradually destroyed. But this is to be effected, neither by preferring false and angry accusations against the Church, for the course which she has thought it her duty to pursue in regard to “matters of ordination;” nor by unconstitutionally subjecting ecclesiastical authority to the “rights of patrons.” If it is to be done at all, it must be done after a calm and dispassionate survey of the reasons and motives which have influenced the conduct of the Church, and those which must decide the course which the Legislature is called upon to adopt.

It would be equally foreign to the object of this Letter to enter into the stormy debate which has arisen as to the propriety or expediency of the “veto law.” It has been a discussion embittered by all the anger of party spirit, and confused by much of the prejudice of political opinions. It is sufficient for my purpose if I have succeeded in freeing it, in your Lordships’ estimation, from the ignorant and reckless charge of rebellion which has been brought against it: a charge, which being urged in utter contempt or oversight of the most primary principles of the constitution, has only served to withdraw from view what now forms the great practical question,—whether the weight of obligation lies with the Church to *abandon* her ecclesiastical, or with the Legislature to *modify* the civil, law. This is a question, which, when the charge of delinquency has been removed, remains to be determined by other considerations;—considerations, which, as I trust to make it appear in the succeeding part of this Letter, all tell with strong and decisive force in favour of the Church.

The review of constitutional law, to which the previous pages have been devoted, I now, my Lords, consider at a close; for I have traced, and endeavoured to lay distinctly before you, the principles which regulate in Scotland the relationship between the law of Patronage, and the powers of spiritual jurisdiction. They are obviously such as to overthrow at once that charge of disobedience against the law which rests upon the assumption that the “rights of patrons” include *both the benefice and the cure*, and that the Church is *as subordinate* in regard to the “collation of ministers” *as the constitution declares her to be supreme*. This unwarrantable assumption has, however, been adopted by those who have had it too much in their power to give it mischievous effect; and consequently the Church has suffered all that violence and invasion of her rightful power, which now places the Legislature in such deep debt to her for an interference in her behalf.

Yes, my Lords, the Court of Session, that idol of the Moderates, which can do no wrong, and whose right of interpreting civil statutory law *extends*, if we would believe their strange reasonings, *to an absolute power over constitutional principle*, has gone forth upon a crusade in defence of Patronage, as invested with all the potency of these gigantic “rights;” and *no one function* of the Church, including those which have been held most sacred *by all the various Parliaments* who have had to do with her affairs, has escaped being subjected to the commands of its authoritative dictation. All this has happened as the natural, and almost necessary, consequence of neglecting the expedient by which the Constitution has enabled the powers of patrons and of the Church to act in harmony, whilst the one is declared to be

independent in regard to, and the other is yet concerned in, the appointment of ministers. I am afraid that your Lordships may have judged of this Letter, that it dwelt at unnecessary length upon this remarkable provision of the Legislature; but its vast importance will be fully estimated, when you turn your attention to the consequences which are entailed by its absence or neglect. The instant it is removed, there is a danger that the "rights of patrons" should mount from their proper sphere, and, infringing upon the powers which have been sacredly secured to the "spiritual office-bearers of the Church," should trench upon ground where they cease to be legitimate. It is a landmark which our fathers have wisely set, nor can it be with impunity removed. The constitutional distinctions between the provinces of civil and ecclesiastical authority then become obliterated, the latter is exposed to mischievous, and emphatically *illegal* innovation, and, to use the expression of an eminent Reformer, which has been selected as the motto of these pages, "confusion follows in all Estates." Nor can this result be possibly avoided. The temporary separation of benefice and cure,—when the authority which rules the one becomes at variance with the authority which rules the other,—appears to be the only practicable method of preserving the integrity *of both* within their respective spheres, and of preventing either the one or the other from being subjected to a foreign and usurped controul.

Accordingly, my Lords, the results which necessarily flow from the neglect of this great constitutional principle are painfully illustrated in the present situation of the Church.

I now beg to direct your Lordships' attention, to the enormous evils to which she has been exposed,

from the adoption, by powerful parties, of principles which, I trust, have been sufficiently proved in the previous pages to be the very antithesis of those which, according to the laws of the constitution, should regulate the conduct of civil power towards the councils of the Scottish Church. If these evils had been confined to the external attacks made against that freedom of action in the "collation and deprivation, of ministers" which it is the great object of these laws to secure to her, and without taking into account the violence and bitterness of feeling which has been thus raised against those who in no way deserve it, and towards whom very different dispositions should be cherished, the Legislature would be yet placed in deep debt to the Church for the alteration of that statute, which has been so interpreted, as to justify such glaring innovations upon constitutional and established principle. But to violence from without has been added the far more perplexing evil of instigated rebellion from within.

Strange and incredible as it must one day appear, when, to the heat of angry controversy, has succeeded the calmness of historical reflexion,—strange and incredible as it *now* appears to those who think of the views involved in their proceedings,—men, who, in entering into the sacred offices of the Church, have publicly declared as one of the CONFESIONS OF THEIR FAITH, that her "*government*" has been ordained by Divine appointment to reside "*in the hands of church officers, distinct from the civil magistrate*,"—men, who have come under a solemn engagement to obey her tribunals in all matters ecclesiastical; to do all in their power to preserve her "unity," "notwithstanding what trouble or persecution may happen," and "humbly and willingly to sub-

mit themselves unto the admonitions of their brethren, and to the discipline of the Church,"—such men have deemed it consistent with the integrity of these their vows, to transfer their allegiance in regard to the "government of the Church," and the exercise of her most sacred functions, from those to whom they have confessed it to be committed by Divine appointment, to those who, by the fundamental laws which it is their duty to defend, possess *no authority whatever* in such concerns. They have not considered themselves as in any way breaking their solemn engagement to reverence the censures of her councils, and submit themselves to the decisions of her discipline, when, refusing to obey the one, and denying all authority to the other, they have sheltered themselves behind the interdicts of a civil court. It is perhaps, possible, my Lords, that they may have reconciled such conclusions to their own consciences and their own reason ; but, enigmatical and wild as they may appear, it behoves them to make a peculiarly clear defence, and to state with more than ordinary distinctness the principles which they conceive to justify their conduct. Hitherto they have failed to do so ; their only attempt at such defence having consisted in a statement of their determination to adhere to those very principles, whose repudiation, in the language above quoted, and in many expressions of similar import to which they have subscribed, formed the essential condition of their being put in possession of that office, whose privileges they have attempted to turn against the authority by which it was conferred. Then, as if to multiply the fallacies upon which they rest, and render still clearer the indefensibility of their strange position, they have declared their belief that in *violating the principles, and disobeying the eccle-*

siastical mandates of their Church, they have been fulfilling their duty as citizens of a State, which has adopted and confirmed the one, and affixed its assent to the inherent authority of the other.

To those, my Lords, who have attacked the privileges of the Church from without, we can only urge the conclusive arguments which demonstrate their conduct to be *unconstitutional*; but against those who, from within her own walls, have lent a helping hand to this invasion, we can add to these, others of a very different description. *They* do not only infringe the primary laws which, according to the constitution of their country, regulate the relationship between separate jurisdictions, but they violate principles which they have engaged to receive as *articles of belief*, and to defend as essential to the well-being of the Christian Church, and to the fulfilment of their own duty as its “office-bearers.” Against such offenders as these, the Church has had no resource but expulsion from an office, whose privileges, as regulated by the authority which can alone confer it, they have deliberately perverted, and whose functions they refuse to discharge *in the way prescribed by the conditions upon which they themselves accepted it.* Last of all,—as if to complete the demonstration of their unworthiness to occupy a position of trust, under a Church whose views are such as have been described, they have endeavoured to persuade the world, and perhaps, harder still, themselves—into the belief, that an interdict from a Lord of Session, can shield them from that authority, against whose inherent power in the “deprivation of ministers,” no law can, or does constitutionally, “derogate,” neither is “prejudicial to.”

The views upon which the Court of Session rests

its assumption of a controlling power over the highest Assemblies of the Church, in those matters in which the constitution declares them to be absolutely independent, are quite as incomprehensible as those upon which her own ministers can reconcile it with their ordination vows to set at defiance the censures, refuse to obey or put in force the "discipline," and deny the authority of her "government." That court will tell us, I presume, that the deposition of such ministers is *illegal*; but this is obviously a mere statement of the fact, that it has assumed those powers which appear so incompatible, not less with its own constitutional position, than with that of the Church with which it has to do. It involves, and depends upon, the supposition, that to *it* has been committed the trust of reviewing the grounds upon which ecclesiastical censures proceed, and of overruling, when it seems meet to it to do so, "the privilege which," says the law, "*God has given to the spiritual office-bearers of the Church, concerning the collation, and deprivation of ministers.*" It involves, too, the supposition, that there exists in the statute book a law which is to form the standard of its judgments upon these "causes and matters ecclesiastical," and one therefore not yet made known to the world, because one not included in any collection of *Acta Parliamenti* which has been hitherto compiled.

The Court of Session acts within its own province when it is engaged in the interpretation of civil statutory law; but this involves no power to trample upon and disregard those great principles of the constitution, which determine the boundaries between independent jurisdictions. Still less does it involve a power of assuming an authority for which not only no law exists, but which *many laws* declare to

belong exclusively to others, and contradict the possibility of its possessing.

The deposition of the seven Strathbogie ministers, though it thus appears to be not only justified, but to be rendered inevitable, by the first principles upon which the laws of the Established Church are founded, has yet raised a storm of indignation *against her*, and of commiseration *for them*, as if they had been totally innocent of any offence against the conditions upon which they received their office,—which conditions when they cease to fulfil, they have no longer any right to hold it. But this is a point which must be first proved, ere the commiseration for the one party, or the condemnation of the other, can be joined in by any reasonable man. And never yet, my Lords, has a shadow of such proof been afforded by those who are the most loud and clamorous in their denunciations of the Church. As a specimen of the unworthy manner in which this question has been debated, I could not do better than refer your Lordships to the speeches of the Earl of Aberdeen in the Upper House.

In his frequent lamentations over the seven deposed ministers of Strathbogie, he invariably represents them as the suffering victims of unrelenting persecution; but his nearest approach to argument consists in the extravagant assertion, that they have been deposed for “*obedience to the law* ;”—an assertion which, in little compass, involves *all* the various and deep-seated fallacies which have been now sufficiently exposed, and which can never become valid reasoning from being re-stated under the form of broad and confident assertion. If that noble Earl can satisfactorily demonstrate that, in attempting to exercise the sacred functions with which they have been entrusted, in a way for-

bidden by that authority to which alone they owe them ;—that in yielding their obedience in “ matters ecclesiastical” to a power, in regard to which they have declared their belief, that it is “ distinct from” that to which belongs the “ government of the Church ;” and in refusing it to that other power, to which (they have also declared) that “ government” has been committed by Divine appointment ;—and finally, that in setting at nought those “ admonitions of their brethren,” to which they have engaged in the presence of an assembled congregation, “ humbly and willingly to submit themselves ;”—if, I say, my Lords, that noble Earl can demonstrate, that, in adopting such a course of conduct as this, they have been only fulfilling their duties as citizens of a State, whose constitution is such as has been described ;—then indeed the noble Earl might be justified in saying, that in violating their vows as ministers, they had fulfilled their vows as subjects. But, this heavy task over, the noble Earl would be yet as far as ever from his object ; and it would still remain for him, in order to justify the deposed seven, to show how it is that they have attempted to retain their situations as office-bearers of a church, to whose principles of faith and discipline they have ceased to adhere. Now, my Lords, of these two essential preliminaries, he has not even attempted to furnish the shadow of a demonstration ; nor, if the attempt had been made, is there any very great reason to suppose that it would have been attended with success. In order to effect the former of these demonstrations, it is necessary that the noble Earl should at least afford us *some* presumption that the principles of Spiritual Independence, and the inherent authority of the Church in the concerns of internal government,—being those violated in the con-

duct of the deposed seven, and which have rendered their deposition necessary,—are not sanctioned by the constitution of this country, and the laws which regulate the nature of the Scottish Establishment. He must, therefore, bring forward (at least) some one statute to balance the authority of those numerous ones which have been quoted in this Letter, and which certainly go far to establish a somewhat different conclusion.

The truth of the noble Earl's position might be admitted, if, 1st, He could produce some one enactment which can weigh down the force of those (in general) which have been here quoted; and of that one (in particular) which,—not so much in the character of a mere provisional statute, as in that of a declaratory law, embodying and defining the fundamental principles which were to lie at the basis of the Establishment, and form part of the ground-work of the constitution of the country, declared, that the office-bearers of the Church possessed inherent and undivided authority in the affairs of her internal government, and the ordering of “all causes and matters ecclesiastical;” and, 2d, That “ordination, collation, and deprivation of ministers” are not, and were not, included under the “matters” over which the Church was thus declared to possess a peculiar and independent jurisdiction.

But, from what the noble Earl is *required to prove* ere he can vindicate his conclusions, I now wish to direct your Lordships' attention, for a moment, to the course which he has *actually* pursued in regard to this argument. Avoiding, or at least omitting, all those grounds upon which alone the situation of these unfortunate men can be justly canvassed, he has rested almost entirely upon repeated appeals to your

Lordships' feelings, and has used every endeavour to rouse those sentiments of sympathy and commiseration, which may be made to cloud the clearest judgment, and interfere with all dangerous sobriety of thought. He eulogizes their character as men and ministers, in language which, whether strictly correct, or greatly overcharged, is equally irrelevant to the real arguments by which their conduct can be justified, or that of their opponents condemned. We must not allow men's private characters to warp our decisions upon their public conduct; neither can causes be vindicated by reference to the reputation of their supporters. If they could, the Earl of Aberdeen would have little cause for exultation; for we can number amongst the ranks of those ministers who stand firm to the standards of their Church, and to their ordination vows, names which may be advantageously compared even with those of the seven late ministers of Strathbogie!

But, my Lords, it would betray a want of confidence in the solidity of the Church's position—which I confess I do not feel,—or else a trick in argument, to which I am not anxious to resort, did I leave the consideration of the far-famed Strathbogie ministers, without noticing the most favourable form in which their views and conduct have been ever stated. I now turn, therefore, to review that position, as represented by one who seldom fails to clothe the opinions he may have formed, with all the amount of argument of which they are susceptible; and who never condescends to rest them upon that system of empty declamation, and general assertion, which is unworthy of a great statesman.

My object in entering upon the case of the deposed seven at all in this Letter was, as previously stated, to

show how practically true it is, that the evils which now beset the Church of Scotland have been multiplied and increased, from the adoption, by powerful parties, of principles which are incompatible with constitutional law, and the integrity of her established Government; and, consequently, how much the Legislature is placed in debt to the Church for the alteration of a statute, which has been so interpreted as to cause such glaring innovations upon that freedom of action which lawfully and inherently belongs to her. No less a personage than Sir Robert Peel has referred to their situation, for the *precisely opposite purpose*, of showing what an impediment it throws in the way of an alteration of the existing law. The difference of these two conclusions depends upon this; that—whereas the principles which have been adopted by the deposed seven are regarded in this Letter (for reasons which have been amply unfolded in its previous pages, and which appear to me to be conclusive) as a violation, not only of constitutional law, but of their vows as ministers,—they are apparently regarded by Sir Robert Peel as involving neither the one nor the other, and this for stated reasons, which I shall now proceed to canvass.

The arguments used by the Right Honourable Baronet, in support of his conclusion, are in no way different from those which, from the beginning of this Letter, I have endeavoured to overthrow. How far this endeavour—founded solely upon reference to authoritative documents—has been successful, I leave with confidence to your Lordships' judgment; but, as I have just said, it would be an unworthy shrinking from the conflict to omit—though at the risk of repetition—to meet them when stated with all the halo which the talent and eloquence of Sir Robert Peel has enabled

him to throw around them, and when coming from one whose station in this country commands unusual respect.

In the correspondence which passed in June last between the (then) leader of the opposition and the Duke of Argyll, we find the Right Honourable Baronet stating his argument upon this subject in three distinct clauses, which I shall now consider in the order in which they stand.

In the *first*, Sir Robert Peel expresses his conviction, that your Lordships' House would not consent to legislate for the future, (involving, of course, an expression of his opinion that it *ought not*) "if the General Assembly should persist in its claim of authority to depose ministers upon this ground—that these ministers had *obeyed the law* as interpreted by the Supreme Courts of Scotland, and by the House of Lords, on an appeal preferred to that tribunal, at the instance of the Church of Scotland."

Such of your Lordships as have paid any attention to the previous part of this Letter, and to the nature of the arguments which it has been its object to oppose, can scarcely fail to recognise old friends under a new face, in this admirably managed sentence of Sir Robert Peel. It obviously proceeds upon those very views respecting the relationship between the powers of civil law in regard to Patronage, and those of the Church in regard to "all causes and matters ecclesiastical," and the "collation and deprivation of ministers," which I have endeavoured, from reference to constitutional law and principle, to show to be totally inadmissible. If there be any strength in statute law, there can be little difficulty in tracing these views up to the same fallacies as before, even though clothed with all that appearance of force, which they here owe

much to the abilities of their advocate, but little indeed to their own intrinsic merit.

In order satisfactorily to analyse the argument thus stated by Sir Robert Peel, it may be well to lay before your Lordships a short sketch of the transactions to which he refers in it; and it will be then easily seen in what that film consists, to which it is indebted for its apparent force.

I have already stated to your Lordships, that it formed no part of the object of this Letter, to enter into any discussion upon the "Veto law," either as regards its own merits and practical expediency, or as to whether it prescribes the rejection of presentees upon grounds which are not contemplated in the law of Patronage, and therefore not recognised by its provisions. I also stated, that the latter was a point which had been already determined by the decisions of civil courts, and that it was one which is yielded to their authority, as being obviously competent in such matters. It may be well now to explain to your Lordships the transactions which brought about these decisions, and to notice some very wide-spread misunderstandings and confusions in regard to them.

Your Lordships are of course aware of what the grounds *were*, upon which the "Veto law" prescribed the rejection of presentees. They had reference to the wishes of congregations, the parties who are obviously the most deeply interested in the appointment of ministers. It appears to have been one of the most fundamental principles of the discipline which forms,—and has formed since an early period of the Reformation,—the standard of the Church of Scotland's procedure in regard to the concerns of her internal government, that no minister should receive ordination to any particular charge, in de-

fiance of the wishes of its congregation. Much violent and unprofitable debate has arisen in regard to the exact amount of decisiveness in the rejection of presentees, which the negative of a congregation was ever *actually* allowed to possess, before the passing of the "Veto law." Though a question which has really very little to do with the merits of the controversy, and with the arguments which can either condemn or support the conduct of the Church, it has been entered into by many as if it were a matter of life and death to their respective causes; and the consequence has been, that the truth in regard to it has been much obscured, but seldom in any way elucidated. Being foreign to my present purpose, I shall here totally avoid it, and merely observe, that whatever may have been the amount of decisiveness in the rejection of presentees ever practically allowed to the wishes of congregations, yet, since a period at least much prior to that of the Union, there has been a certain stage of the proceedings of the judicatories of the Church in the settlement of ministers, at which it was their formal business to take these wishes into account, and give to them such amount of practical effect as accorded with the spirit which, at the time, might pervade the Church, or the actual directories which guided their conduct in this matter. I must again repeat, that I make no attempt to discriminate between the periods at which this stage of the Church's procedure became a mere form, and those during which it produced actual results upon the appointment of ministers. Forms are themselves important; for their retention shows that the principles which once gave them active life, are dormant, but not extinct; and may again resuscitate the

activity of their former state. Now, my Lords, it was at this—the proper, and long established stage of the Church's proceedings in regard to presentees, that the “Veto law” directed the wishes of the congregations to be invested with that full measure of authority which it was its object to bestow upon,—or, as opinions may go,—to restore to them. If these wishes were to be allowed *any force at all* in the appointment of the minister, of course it was to be given *at that stage* of the dealings with the presentee, *at which they formed the regular and single subject of consideration*; and *before* the presbytery proceeded to those other stages at which his appointment or rejection came to be decided, upon grounds more nearly relating to himself, and his personal character or acquirements..

Such being the nature of the “Veto law,”—let us now look at the circumstances attending the decisions to which Sir Robert Peel refers, and which, I have before said, render it useless to enter into any discussion as to whether that law does, or does not, prescribe the rejection of presentees upon grounds not recognised in the provisions or intentions of the law of Patronage.

Mr Young, a presentee of the Earl of Kinnoul,—who seems to have thought his “civil rights” most injuriously affected by his being withheld, in conformity with the discipline of the Church, from occupying an office which he was prepared to accept under a vow, that he had been “led, in designing the work of the ministry, by a single and sincere love to God,” and “*not by the motives of worldly gain*,”—brought an action against the presbytery, by which he had been rejected in terms of the “veto law,” with a view to obtaining a decision that these “civil rights” had

been affected by this rejection, in a way not legitimate according to the law of Patronage. This object he attained, in the form of a decision, that by the law of Patronage the Presbytery was bound to proceed to those *ulterior* stages of its dealings with the presentee, at which its judgment in regard to his "admission" must be determined by other considerations than the wishes of the people; and, consequently, *at which the negative of the congregation could not influence that judgment.* This was, therefore, an authoritative decision, that the law of Patronage did not contemplate the rejection of presentees, upon such grounds as those which, under the "Veto law," are made to imply and justify such rejection. Against this decision, the Church appealed to your Lordships' House. Her appeal was unsuccessful, and the late Lord Chancellor confirmed the decret of the subordinate court.

Now, my Lords, what is the statement made by Sir Robert Peel in the sentence above quoted, and upon which his whole argument is founded? It is neither more nor less than that which has been already animadverted upon, as found in the less able speeches of the Earl of Aberdeen; and which asserts, that the seven ministers of Strathbogie have been deposed for "obedience to the law." I might, therefore, content myself with referring your Lordships to the previous pages of this Letter, and with repeating the list of points which it is absolutely necessary to prove, ere this assertion can be admitted for a moment as bearing the slightest appearance of truth. But Sir Robert Peel has expressed it in a form which—I speak with all the respect due to the Right Honourable Baronet—whilst increasing the speciousness of its aspect, serves but to multiply the fallacies upon which it rests. Not only

does the Right Honourable Baronet assume, (what, if there be any force in a crowd of statutes, or authority in the constitutional principles of this country, is contradicted by the whole spirit of its laws, and incompatible with their due fulfilment) that an adverse decision of civil tribunals, in reference to the rejection of a presentee by the Church, involves not merely a decision that the *endowment* must be disposed of *as if that rejection had not been made*; but, an authoritative command to the Church *to retrace her steps*, and “*to collate*” a minister, *when it does not seem meet to her to do so*;—not only, I say, does he thus assume that the “rights of patrons” include both the benefice *and the cure*,—but he has so framed his sentence, as to represent the Church *as acquiescing* in this position when the appeal was made, and only discovering the freedom which constitutionally belongs to her, *when that appeal was decided in opposition to her desires*. This sentence then—I again wish to speak with all deference to the author—involves both an assumption of a principle which he is not justified in making, and a misrepresentation of facts, in ascribing, without warrant, to the Church an acquiescence in it. It would be fair if Sir Robert Peel were to attempt to prove that such civil decisions constitutionally involve a power of controlling the Church in the affairs of her internal “government” and “in the collation and deprivation of ministers;” but it is *not* fair to frame a sentence, which, under the sanction of his high name, ascribes to the Church motives for the appeal to your Lordships’ House, which she herself repudiates, and an assent to a proposition, which she not only holds to be unwarranted by the constitution of this country, but to be incompatible with her adherence to the articles of her own faith, and the principles of her own discipline.

Still less is it fair, to state the grounds upon which the seven late ministers of Strathbogie have been deposed, in a way which conceals from view the grounds assigned by the authority by which that deposition was effected, and clothes them with an appearance of injustice which is due to the arbitrary introduction of foreign elements, and to the assumption of doctrines at which there is no attempt at proof.

The seven late ministers of Strathbogie were NOT deposed for obedience to the law, as interpreted by your Lordships' House ; whose decision in no way implied, neither CAN, *constitutionally*, imply, any authoritative command over the "privileges," which, according to the view adopted by the constitution, "*God has given* to the spiritual office-bearers of his Church, concerning the collation and deprivation of ministers;" and which by fundamental laws are left untouched by such decisions. They have been deposed for violating the conditions upon which they received their office, and their ordination vows; for disobeying censures to which they have engaged "humbly and willingly to submit;" and, in short, for surrendering every one principle of a discipline which they have declared to be "founded upon and consonant to the Holy Scriptures." It is in vain to plead, for such conduct as this, the sanction of a State *which has confirmed every one principle which they have thus broken*, and declared the same to be "most just, good, and godly." And even, as before said,—if it *were* possible for them to urge such a plea, or if it should become so by the future confirmation of doctrines, which must first overthrow the present constitution of this country, and the engagements of a national treaty,—it is difficult to conceive how they could justify themselves in surren-

dering what to every office-bearer of the Church, are articles of belief, rather than renounce the benefits of the Establishment; and for not being prepared, like their brethren, to quit the one rather than to give up the other.

I trust I have now made it sufficiently clear to your Lordships, that the view adopted and advocated by Sir Robert Peel in the passage which I have been considering, and which represents the “case of Strathbogie” as an impediment in the way of an alteration of the law, depends both upon a misstatement and misunderstanding of the real cause of the deposition of the seven ministers, and upon all those unconstitutional principles, in regard to the relationship between the powers of patrons and the recognized authority of the Church, which have been amply considered, and I think refuted, in the previous part of this Letter.

The two next clauses, in which Sir Robert Peel follows up the argument contained in the first, must, of course, be in a great measure answered, when that argument has been overthrown, and the statements upon which it proceeds shown to be incorrect. The next sentence, however, of the Right Honourable Baronet’s letter appears to involve fallacies, independent of those upon which that former argument proceeds, and which can only justify his conclusion when *both*, joined together, are made to unite in the attack. But it would be absurd to make such an assertion in regard to any reasoning of Sir Robert Peel, without stating distinctly the grounds upon which it rests. I now, therefore, beg your Lordships’ attention to the clause of his Letter of which I here speak.

The Right Honourable Baronet states, “That he presumes that the right to depose ministers involves

substantially the right to deprive them of the privileges and emoluments attached by law to their parochial cures; and that it appears to him, if such penalties could be inflicted for the cause assigned, the authority of the Church over the statute law and civil tribunals of the country would be paramount, even in matters of a civil and temporal nature."

This argument evidently divides itself into three parts. 1st, We have Sir Robert Peel's statement of his belief in the fact, that "the right to depose ministers involves substantially the right to deprive them of the privileges and emoluments attached by law to their parochial cures;" 2d, An application of this fact to the case of the Strathbogie ministers, and the claims of the Church *as he has represented them*; and, 3d, The result to which he conceives this application leads, and which he considers to be unconstitutional;—the whole argument thus forming a supposed "*reductio ad absurdum*."

Now, my Lords, let us attend, in the first place, to what is implied in Sir Robert Peel's belief in the fact which forms one of the two premises necessary to his conclusion. The Right Honourable Baronet tells us, that he "presumes" that the right to depose ministers involves a right to deprive them of the endowments attached to the occupancy of their cure;—that is to say, he "presumes" or believes (for the words are here evidently synonymous) that, *by the law of this country*, the "ecclesiastical censure" of deposition is recognised as an authoritative and absolute decision, not only with regard to the occupancy of the sacred office, but the possession of the benefice, which is thus indeed *attached to it*;—and, consequently, his belief, that *there is no existing civil law which limits the Church, in her sentences of deposition, to certain*

specified grounds, and has power to appropriate the benefice according to its own provisions, when *other grounds are taken by the Church as the justification of such a sentence*. It thus appears (to follow up the inferences deducible from this statement of his views) that the Right Honourable Baronet is fully aware of the fact, that in the Church's sentences of *expulsion from the work of her ministry*, she is not constitutionally shackled *even with that fear of pecuniary sacrifice*, which is intended to form a certain amount of restraint upon her *refusals to bestow the sacred office*, when these refusals do not proceed upon the grounds justified by the law of Patronage. Finally, therefore, Sir Robert Peel knows, that when the *only* civil law which concerns at all the disposal of the Church's endowments, viz., that of *Patronage*, has seen a presentee invested with the full amount of "civil right" which, according to its provision, his presentation gives to him, and therefore, (if found qualified) collated and admitted,—it finally withdraws its guardianship from him,—*he is left to be dealt with solely by the powers of spiritual government*; and, if he offends against these, he offends also against the laws of his country, which then make no attempt to continue him in the enjoyment of emoluments placed at the disposal of the Church.

Sir Robert Peel is right. From the moment a presentee is admitted to the work of the Church's ministry, and *receives ordination at her hands*, his *possession of the endowments attached to his sacred office depends solely upon the fulfilment of her laws, and his obedience to her judgments and discipline*. Neither does there exist any civil statute, whose provisions in any way respect these judgments, or *by which a civil court can bring them under its review*.

I now proceed, my Lords, to the two next divisions of Sir Robert Peel's argument, and to examine the use which he makes of the very just assumption upon which he founds them. In order to arrive at his conclusion, it will be observed that the Right Honourable Baronet applies the fact above stated, to the case of the Strathbogie ministers, and to the claims of the Church *as he had previously represented them*; for he says, that "if such penalties could be inflicted *for the cause assigned*, the authority of the Church over the statute law and civil tribunals of the country would be paramount, even in matters of a civil and temporal nature." I have already shown, that the "cause assigned" by Sir Robert Peel for the deposition of the seven late ministers of Strathbogie, is *not* the "cause assigned" by the Church herself; and that the view taken by the Right Honourable Baronet of this point depends upon and involves a host of assumptions and doctrines, which are incompatible with constitutional law and principle. But now, let us attend to the conclusion itself, which is, that the Church's claim to depose ministers for the cause for which the ministers of Strathbogie have been deposed,—implying, as it does, a right to deprive them of the endowments attached to their cures,—involves, in consequence, a claim to be "paramount over the statute law and civil tribunals of the country, even in matters of a civil and temporal nature." It is not quite clear whether Sir Robert states this as a consequence of the claim to depose ministers *upon the grounds upon which the seven have been deposed*, or to the fact *that deprivation involves an authoritative disposal of the benefices*, which he has termed the "emoluments and privileges attached by law to their parochial cures;" and which it is evident from the whole sentence, he

regards as “civil matters,” and guarded by the provisions of civil law. Probably Sir Robert means, that whatever strength they each may have, should be united, in order to the establishment of the conclusion above stated. But it is difficult to conceive how either the one or the other can, in the slightest degree, support it. The cause for which the seven late ministers of Strathbogie were deposed, has been now often enough stated to your Lordships. They have been deposed for attempting to exercise their spiritual functions in a way forbidden by the authority to which they owe them, or for attempting to “collate” a minister in defiance of the power to which alone constitutionally, and (as they must believe) inherently, belongs the privilege of regulating the conditions upon which such “collation” can take place.

It is a mere repetition of what has been before said, to remind your Lordships, that ere Sir Robert Peel can prove that a claim to depose ministers *on such grounds*, involves a claim to be paramount over civil law in civil matters, he must first show that the most sacred functions of the Church are *civil matters*, and produce (*at least*) some one statute which assumes a power to command her conduct in their exercise. The fundamental principles of the constitution deny the possibility of any civil law assuming such a power. There is no reason whatever to suppose that the present law of Patronage does make this assumption, except that the Court of Session has *acted as if it did*;—and it can scarcely be allowed that a civil court acts within its legitimate sphere of interpreting civil statutes, when it invests them with a power which casts aside the principles repeatedly declared by the fountain-head of legislation.

Then again, if in coming to his conclusion Sir Robert

Peel is chiefly guided by the fact, that deposition involves a deprivation of benefice, he appears to be leaning upon a stay which is equally insecure. The Right Honourable Baronet, in making his own statement, has furnished a decisive answer against the validity of his argument. He has told us, and he has told us truly, that a sentence of deposition, pronounced by the Church, necessarily occasions, by the laws of the country, a vacancy of the benefice as well as of the cure; and in doing so he has told us what is indeed a fact, that there is *no civil law* which limits the Church, in the passing of such sentences, to the consideration of certain specified grounds, and by which the benefice can be otherwise disposed of when different grounds are made the causes of their being passed. Is it not strange then, my Lords, that the Right Honourable Baronet should speak of the deprivation of emoluments which, *by the constitution of the country, and his own admission*, are thus placed at the absolute disposal of spiritual authority, as if it were a deprivation effected *in violation of* "civil rights?" If the deprivation be in *conformity with* civil and constitutional law, how can it yet be *in violation of* law? Is it not strange that he should represent,—through the medium of a provision made to secure and increase the authority of the Church's power,—the exercise of her inherent freedom in the "deprivation of ministers," as a claim to be paramount over the statute law and civil tribunals of the State? If the statute law, and privileges of the civil tribunals of the country, are in any way violated by the patrimony of the Church following the decisions of spiritual authority, *there must be some statute* which gives to these civil tribunals *a right of guardianship over the patrimony referred to, subsequent to the period of ordination*.

and a right to dispose of it in a certain way, when the freedom of that spiritual authority, in the “deprivation of ministers,” is exerted beyond a stated point. Sir Robert Peel himself has told us that there is no such statute; for, if there were, his own presumption in regard to the necessity of deposition, including deprivation of benefice, would be as unwarranted and false as it is in reality correct.

And here, my Lords, appears to be the proper place to protest to your Lordships, and—if these pages should ever meet his eye—to Sir Robert Peel himself, against the utter fallacy of that position, which, from the fact of civil rights being affected by the exercise of the Church’s power, would ascribe to civil courts the right of interfering with her freedom, and controlling her in the affairs of her internal government. I do not *now* refer merely to the *unconstitutional* character of this position;—I do not now refer to the fact which has been already so abundantly proved, that it is in direct violation of the great laws and principles upon which the Scottish Establishment is founded. I allude to the considerations of *common sense and justice*, upon which these principles proceed, and which are set at nought when these principles are broken. I would urge upon your Lordships, and upon Sir Robert Peel, to remember,—what the Parliaments of Scotland, who had to do with that country’s Church, seem never to have forgotten,—that the *only civil rights* which can be affected at all, by any branch of spiritual jurisdiction, *are those which the State has voluntarily, and for wise purposes, made contingent on the performance or non-performance of some spiritual act*. What right, then, I would ask, can either individuals or civil courts have to complain that civil rights are injuriously affected by the exertions of ecclesiastical authority, or

to claim upon this account a control over spiritual independence? And, my Lords, if, instead of a mere party within the State, (including though it does the Lords of Session!) it was the *State itself* that disapproved of the rules laid down by the councils of the Church for the regulation of her government,—the argument would be still the same. If the civil rights of individuals be indeed disposed of according to rules of which the State does not approve, let it remember that it is by its own act that they are placed in such a situation as to be liable to their award. *Let it use the remedy that is in its power*; let it make those civil rights cease to be dependent upon the spiritual movements of a body, over whose spiritual movements it has confessed that it has no control. But so long as the present plan of the constitution is adhered to,—so long as the State makes the possession of civil rights depend upon the performance of some spiritual act, it must be content to let them abide by the decisions of that body, whose right to command or forbid the performance of such acts it has itself acknowledged. Neither the Moderate party, nor the Lords of Session themselves, can alter the nature of things. Spiritual functions are not the less spiritual functions, neither do they become more subject to civil control, because civil rights depend upon, and are affected by their exercise.

I shall not long detain your Lordships upon the last clause in Sir Robert Peel's letter which concerns this subject. We find the Right Honourable Baronet there stating, "That he thought such a claim upon the part of the Church would greatly diminish or destroy any advantage that might have been hoped from merely prospective legislation, and that new causes

of difference, and new conflicts of authority, not provided for by such legislation, would very soon occur."

The force of this argument of course hangs entirely upon those which have gone before it; for it is a consequence of the claims of the Church being *such* as, in the two previous sentences, he had endeavoured to represent them. It may be admitted that, *if* the Church claimed to be "paramount over the statute law, and civil tribunals of the country, in matters of a civil and temporal nature," the advantage to be derived from an alteration of the law of Patronage would be "diminished, if not destroyed." But this is an arbitrary and forced interpretation, which Sir Robert Peel has utterly failed to prove to be justified by, or implied in, the claim which is really advanced by the Church. I would refer your Lordships to what has just been said in considering the former clause of the Right Honourable Baronet's letter; for there I have endeavoured to make it evident how little his own premises warrant the conclusion to which he comes. The Church DOES NOT claim to be "paramount over the statute law, and civil tribunals of the country, in matters of a civil and temporal nature;" but she DOES claim to exercise (in the words of the statute) that "privilege which God hath given her in the collation and deprivation of ministers;" she DOES claim that the *Lords of Session* shall not be allowed to assume *command* over her *in such matters*; or, by usurping an authority, which is not only inconsistent with their own situation in the State, but which has been expressly denied to them, and as expressly declared to belong to her,—*make themselves paramount over the constitutional law of this country, and its most primary and fundamental principles.*

If we apply Sir Robert Peel's conclusion to the real claim of the Church, and not to the suppositious one, he must be understood as saying, that no legislation will be satisfactory to him which does not prostrate the ecclesiastical before the civil power, in the very matters mentioned by the Legislature as belonging to the Church's inherent privilege. If such be indeed the view adopted by the Right Honourable Baronet, it is no bright prospect for Scotland ; and we must be prepared for the present storm gathering into a tempest.

Before leaving the consideration of Sir Robert Peel's argument, it may be well to notice rather a remarkable feature in the sentence last quoted. Sir Robert speaks of "merely prospective legislation," as being rendered useless by the nature of the Church's claims, as he has represented them.

It is impossible not to be startled by language, coming from that Right Honourable Baronet, which seems to recommend *ex post facto legislation* ;—the more so as the usual form of legislation—the prospective—would evidently be quite sufficient to put an end to any claim upon the part of the Church, and either destroy or modify the principles upon which the Establishment is now founded. What then, we are naturally led to ask, is it in the present situation of the Church, and the nature of her claim, that would require any satisfactory legislation to be in some way *retrospective* ? What is it that deprives, in the eyes of Sir Robert Peel, "merely prospective legislation," of the advantages, which might otherwise attend it ? There is something more alluded to here than the general character of illegality, which in his mind attaches to the Church's proceedings ; and it is easy to perceive that the case of the seven late ministers of Strathbogie is referred to.

Your Lordships have already seen, from his own

language, that Sir Robert is fully aware of the fact, that, by the laws of the country, the ecclesiastical sentence of deposition necessarily involves a loss of benefice ; and therefore, that there is no civil statute whose object it is to supply the means of reviewing the grounds upon which ecclesiastical censures proceed, and of appropriating benefices according to its own provisions, when these censures pass a certain boundary. Notwithstanding this,—notwithstanding the thus confessed non-existence of any statute which concerns at all ecclesiastical censures, Sir Robert Peel considers the deposition of the seven late ministers of Strathbogie as *a violation of civil law*. He therefore wishes that they should be continued in the enjoyment of those benefices which are constitutionally placed at the absolute disposal of the Church, either by *her* being compelled to withdraw the sentence of deposition, and reponer them in their cures, or by *their* being retained in possession of the endowments *in defiance of that sentence*.

It thus becomes evident why Sir Robert Peel wishes for some *retrospective* legislation. No “merely prospective” law, which could be *now* passed, would effect the object which he appears to have in view ;—because the sentence of deposition, upon the late ministers of Strathbogie, took place at a time when the principles of the constitution were legally yet in operation :—*They are so still* ; and, in order to protect these men from the consequences which, *by the existing laws* both of their country and their Church, their conduct has entailed upon them, not only must these laws be repealed, but the new law must be made to apply to the transactions of a period anterior to its own existence ! Yet, let not even this stand in the way of the preservation of the Church’s freedom, and the fulfilment by the

Legislature of the debt it owes to her. If it will appease the Moderates, and conciliate Sir Robert Peel, (who has unfortunately given his influence to their cause) by all means let the ordinary rules which regulate the conduct of statesmen, in matters of legislation, be for a time suspended; and let an *ex post facto* law be passed for the special purpose of retaining the seven late ministers of Strathbogie in the enjoyment of their benefices. In order to indemnify them for violating the principles of their Church, let the principles of the constitution too be temporally set aside. This, my Lords, will complete the argument of the Church, and exhibit in their true character the views and opinions of her opponents.

But, my Lords, it is now time to leave the consideration of the arguments brought forward by Sir Robert Peel in the letter above quoted. I should not have dwelt so long upon them, were it not that I had previously adduced the case of the Strathbogie ministers, for the purpose of supporting the conclusion, that the difficulties and dangers, which now beset the Church of Scotland, are in a great measure so distinctly attributable to the adoption of doctrines incompatible with the spirit of the laws, as to place the Legislature in debt to the Church for the restoration of their invaded principles. This is the direct antithesis of the use which Sir Robert Peel has made of a reference to their situation. Considering the position held by the Right Honourable Baronet, and the weight justly attached to any opinion which he may advocate, it becomes absolutely necessary, in proving his position to be directly opposed to the truth, to state with peculiar distinctness the grounds upon which the arguments he has advanced appear to be invalid. This, therefore, I have endeavoured to do; and leaving with

confidence the decision to your Lordships' judgment, I shall here make a short recapitulation of the points which, from historical facts and the principles of constitutional law, seem to have been established with all the force of rigid demonstration.

I. That the Councils of the Scottish Church—the assemblies of her office-bearers—are, by the fundamental laws upon which the Establishment is founded, the only parties who have to do with the conduct of her internal government; and that the numerous statutes, declaratory and confirmatory, of this principle, which form a continuous chain from the year 1567 down to the period of the Union, embody it as the foundation-stone of the constitution in regard to the Church, that she, and she alone, is inherently the proper and competent judge in “all causes and matters ecclesiastical.”

II. That the examination, *collation*, and *deprivation of ministers* are declared to be *peculiarly* the subjects of spiritual jurisdiction.

III. That the law of Patronage, as it existed prior to the Union, possessed no legal power whatever to coerce the tribunals of spiritual government in the discharge of their sacred functions; and that the “rights of patrons,” whether we take them as regulated by the Act of 1567, or that of 1592, were not only strictly limited as referring solely to the pecuniary endowments usually attached to the occupancy of cures, but were not even allowed to be of such a nature as to have these,—the patrimony of the Church,—at their uncontrolled disposal. Your Lordships have seen that, ere a presentation could invest any man with the smallest amount of right *to the possession of a bene-*

fice, he was to be judged of by the judicatories of the Church, and if their refusal to admit him rested upon an adverse decision as to his “qualifications,” not only was he absolutely cut off from the sacred office, but also from the emoluments attached to it. It was only when such refusals had reference to other grounds,—not comprehended under the term “qualifications,”—that his presentation constituted a right to the possession of the endowment. But *neither in the one case nor in the other* did that presentation involve the slightest degree of *direct control over the exercise of those spiritual functions* to which the “admission of ministers” belongs. The principles adopted by the constitution were incompatible with such a power being given to it ; and it was accordingly expressly withheld.

IV. That at the treaty of Union between England and Scotland it was provided that the preservation, in full integrity, of all these principles, and of the discipline and government of the Church, “should in all times coming be taken to be, and were there declared to be, essential and fundamental parts of the said treaty.”

These points, my Lords, have been completely established ; for, indeed, they are matters of fact which it is impossible to deny : and in order to bring up the review of the arguments hitherto urged in this Letter, it is only necessary to remind your Lordships of those *other facts* which shew the melancholy contrast between that which *is*, and that which *would have been*, had constitutional principle not been violated and arbitrarily set aside, by those who are loudest in their exclamations about the duty of obeying the “laws of the land.”

The Lords of Session have gratuitously assumed that,—*besides* their right to interpret the law of Patronage, and therefore to decide whether the “Veto law” prescribes or does not prescribe the rejection of presentees upon grounds illegitimate according to the provisions of that enactment, to the effect of detaching the benefice from the cure,—they have power to coerce the councils of spiritual government, in the exercise of those privileges which the constitution says “God has given to them,” and with which no civil court has the smallest title to interfere. They have erected themselves into a tribunal of control over a jurisdiction as supreme in its appointed sphere as, and more independent than, their own ; and *no one item* mentioned by the laws as belonging peculiarly to the judgment of the Church has been held exempt from the usurped,—and therefore disregarded,—authority of their commands or interdicts. It is in vain to attempt to cover over such a direct violation of constitutional principle, by forging the sacred name of Law. Let the Moderates clamour as they will, and fortify the weak point by casting the blame of political delinquency from those with whom it justly lies, to the office-bearers and councils of the Church ; they cannot permanently veil the truth, that the Court of Session has rebelled, not only against the particular constitutional restraints which limit the nature and extent of its own power, but against the general and primary rules to which every body in the State must be subordinate, if the government of society is not to be incessantly disturbed by the confounding of independent jurisdictions. The Moderates have indeed succeeded to a strange extent in imbuing the public mind with that most inexplicable confusion which ascribes to the power of statutory interpretation, a power of overruling the fundamental

principles laid down by the fountain-head of Legislation. But it is to be hoped that the members of the Legislature will take a dispassionate survey of what these principles really are. Such a review, my Lords, I have endeavoured to lay before you in the preceding pages ; and from it, it seems impossible to escape the conclusion, that they are now violently overthrown, by parties who have much power, but no right, to break them, and consequently that the Legislature is placed in deep debt to the Church for an interference in her behalf.

But, my Lords, the duty of the Legislature to interfere in the controversy which has arisen in Scotland between the tribunals of civil and ecclesiastical government, appears to me to be established upon grounds altogether independent of those numerous and powerful arguments, which,—derived from the peculiar nature and character of the Church's power, and its relationship to the other bodies in the State,—conclusively prove the fact, that that controversy has arisen from a disregard upon the part of her adversaries, of every one principle laid down by the constitution, in regard both to her and to themselves. Impossible as it is, when these principles are known, to cover over with even a colouring of truth, the doctrines of the Moderate party, I contend, my Lords, that the Church may safely throw aside the great truths which render her position so impregnable, and yet urge with success upon Parliament, the duty of legislative interposition.

Let us, for the sake of argument, so far disregard the frequent and express declarations of the laws as to view the councils of the Church, and the extent and freedom of her privileges,—not as inherent and underived from,—but as *created*, and *conferred upon* her by the Legislature. In other words, let us view

the Church as forming merely one of the various bodies, whose functions make up the civil polity of the nation. Such a supposition would but place the Church upon a par with the Court of Session, as to the origin of its existence; and the views advocated by the Moderate party in regard to the dispute which has arisen between these two bodies, as they exist in their real and present relationship to each other, maybe easily shown to be equally untenable, even were this relationship altered in conformity with the hypothesis just stated. As matters now stand—as that relationship really exists—the Church complains that a violent invasion has been made upon a territory, her's by inherent right, not less than guaranteed to her by the constitution of the country, and that orders have been directed to her which the civil court has no right to give, and which she is under no obligation to obey. The manner in which this complaint is met by the Earl of Aberdeen, and others of the same opinions, is by the assumption, that the fact of what the Church calls an inroad having been made *by the party of whom she complains*, is proof that it was just and proper; and that the very circumstance of obedience having been required, *is proof that that obedience was due*.

Now, my Lords, utterly monstrous as such a position is in regard to the conduct of the Church, when we consider the true constitutional character of her power, it is still sufficiently fallacious, even when such considerations are left altogether out of view. Is not every principle which should be kept before a statesman's eye, and guide his course in the management of public affairs, as grievously offended as those of justice and common sense, when, in a dispute between two independent jurisdictions, as to the line of demarcation set

by the laws of society to separate and define the limits of their powers, the question is determined, upon the mere ground that the province of the one in whose favour it is given, consists in the right of interpreting civil law? Are we prepared to admit, that such a right extends to an absolute authority over the great statutory enactments which concern the functions and privileges of the various bodies who have had parts assigned them in the organization of the State ; and, consequently, a power of unlimited acquisition to itself, and of derogation from others, whose foundation is yet identical with its own? *Is there no distinction between a mere civil statute, and constitutional law and principle?* And does not the position of the Moderates depend upon the dangerous fallacy which discerns not the difference between them? Most evidently it does. There may be a difficulty sometimes in drawing the line of separation ; but there is none in fixing upon certain points, which are obviously either upon the one side or the other. Every constitution which, like ours, has to do with the intricate concerns of a great people, must adopt the system of the *division of labour*; and in the rules which are laid down for the definition of the powers of each body, and for their due separation from each other, the constitution itself may be said to consist. It is sufficiently apparent that disputes are liable to arise between them in regard to the boundaries of their respective spheres, and it seems to be equally apparent that there can be no satisfactory means of settling such disputes, *except that of public opinion, expressed in the form of legislation.* When the constitution is destroyed by the transgression of those limits which it has set, and which are necessary to the harmony of its parts, where can we look for a controlling power sufficient to restore its

due integrity, but to that entire society, whose welfare is bound up in its preservation as a whole, and which has no interest peculiar to any of its contending members?

Perhaps the most memorable and striking practical exemplification of the truth of this position, that has ever occurred, was exhibited to our view but a very short time ago, in the contest which occurred between the House of Commons and the Court of Queen's Bench.

But here, my Lords, I must protest against being supposed to bring forward this instance of collision between two independent bodies, as a parallel case to that to which it is the object of these pages to direct your attention. Far from it. Sir Robert Peel has objected to such a parallel being drawn, as unfavourable to the House of Commons; and well may the Church shrink from the comparison, for a precisely opposite reason. The conflict between the House of Commons and the Court of Queen's Bench, and that which now exists between the Church of Scotland and the Court of Session have important points of difference, which render them essentially distinct. But your Lordships will remember that I am now considering the arguments in favour of legislative interposition, which the Church of Scotland may urge, even when the great peculiarities of her character and situation are left entirely out of view; and as regards *this* subject there are certain inferences, resulting from the history of the former conflict, which it is of importance to consider.

That history, in so far as there is any need to follow it, may be divided into four heads. 1st, The House of Commons found a privilege, for whose propriety and existence it strenuously contended,

invaded by a decision of the Queen's Bench. *2d*, That House endeavoured for some time to defend this broken privilege by the exertions of its single power. *3d*, It found itself inadequate to effect this object, without resorting to unconstitutional means, and, confessing this inadequacy, sought the remedy of legislation. *4th*, The Legislature immediately passed an act, distinctly providing for the integrity of the claimed privilege, and expressly securing it to the Commons.

The inadequacy of the House of Commons to defend what it considered a valuable privilege is obviously a most important fact; and not only is this a necessary inference from its own conduct, but the debate which arose upon the question of Legislation shows that such was the opinion of the majority of the House itself. Again, the latter part of this history—the easy and immediate sanction which the Legislature gave to the claimed privilege, shows that it agreed with the House of Commons, at least *as to the propriety of its existence*. I should say more—nor does the inference appear to be overdrawn—that the manner in which the Legislature gave that sanction implied its belief that, *by the constitution, the House already had it*. Here, then, we have an instance proving that the power of judicial decisions may sometimes infringe upon privileges, at least, which the public welfare requires other bodies to possess; and, if the latter inference be not overdrawn, that the power of judicial decisions, by the interpretation of particular statutes, may sometimes nullify the intentions of the constitution, and infringe upon rights which by it have an independent existence.

If, my Lords, it was sufficiently powerful to have this effect in reference to one of the privileges of the

Commons' House of Parliament, and to force that great body to seek the remedy of legislation,—how much more easily may it have it in reference to the powers and privileges of those other bodies which occupy, if not less important, at least less conspicuous, stations in the ranks of the constitution, and whose functions fill perhaps as vital, though less obvious, parts in the great work of government? The Church of Scotland, my Lords, is one of those bodies, and to such as rightly estimate the mighty influence of well-taught, well-spread religion among the mass of the population, it will not appear to be the least important of them all.

Taking, then, the lowest ground,—resigning in the argument all those considerations which should really determine your Lordships' judgment in regard to the position of the Church of Scotland, and allowing,—what never can be allowed without violating constitutional principle,—that the recent proceedings of the Court of Session are legitimate exertions of judicial power; it is evidently possible that they may be trampling upon privileges which, for the sake of public welfare, *ought to be*,—nay, which, by the spirit and scope of the constitution, already *are*. The duty, therefore, of the Legislature to interpose in a dispute, such as has now arisen between that Church and the Court of Session, rests upon a basis altogether independent of any particular reference to its merits, and the obligation can be in no way destroyed because the party of whom the Church complains is a tribunal for the interpretation of civil law.

But, my Lords, I must now bring this Letter to a close, as it has already reached a length which I did not at first anticipate. Withdrawing, then, your attention from the hypothetical case which has been just

considered, and directing it to that with which you really have to do, I would beg your Lordships to bear in mind the conclusion which appears to have been established from the arguments employed, and the facts referred to in the previous pages. The great object which I have had in view in thus addressing your Lordships has been to prove the necessity of legislative interposition in favour of the Church of Scotland at the present crisis. In order fully to support the truth of this conclusion, it has been necessary to review at considerable length the constitutional principles upon which the Establishment is founded, and which illustrate the real relationship between the powers of civil and ecclesiastical control, as fixed by the various enactments of the Scottish Legislature, and finally confirmed at the period of the Union. Upon such a review,—and upon such a review alone,—can the question be fairly argued. The great strength of the Moderate party has lain in keeping it as much as possible out of sight; and substituting for solid argument, based upon authoritative documents, a system of general inference and assertion, or paltry attack upon the minor points of the subject, and upon the conduct and motives of the Church, which, though utterly unworthy of influencing public men, upon a question of great national importance, has yet received strange support from some who now stand high in the councils of the State. The charge of “*disobedience against the law*,” which rests both upon an ignorance of facts, and a total disregard of constitutional principle, has been re-echoed from one end of the country to the other, with a frequency which shows that neither the employment of bugbears is confined to demagogues, nor their success to the populace. That such is the true character of this charge, is not a mere

assertion, like those upon which the Moderates build their reasoning,—but is one which I leave to be judged of by your Lordships according to what has been advanced.

I now wish, however, to remind your Lordships of what was said at the commencement of this Letter; viz., that the arguments to be adduced against those objections to Parliamentary interposition, which are founded upon this preposterous charge of rebellion, would be found to be not only sufficient to prove the non-existence of any such impediment, but to go far towards the establishment of the directly opposite conclusion,—that the Legislature *is in debt* to the Church for an interference in her behalf. If these arguments are at all valid, the existence of this obligation upon the part of the Legislature must be now apparent; and the only question which remains is, how far does it extend? Will Parliament have sufficiently discharged its duty to the Church, by merely affording her protection from those unconstitutional attacks of the Court of Session, which proceed upon the assumption, that the civil “rights of Patrons” include both the benefice and the cure;—or, is there nothing in her constitutional history and position, which *requires* the Legislature to advance a step farther, and by so altering the present law of Patronage as to bring it into harmony with the Church’s principles, to preserve in full integrity and vigour, a great national institution?

In answer to this question, my Lords, it is necessary to refer to a fact, which has not been previously mentioned, but of which most of your Lordships are probably aware. I allude, my Lords, to the fact, that for some time previous to the Union, (since 1690) Patronage, as regulated by the statute of 1592, had

ceased to be in existence. It was *restored* in 1711, by the act of Queen Anne, which declared that the judicatories of the Church were in future to lie under the same "obligation" to receive and admit all qualified presentees, as that to which they had been subjected by the Parliament of 1592.

Here, therefore, the question naturally occurs, what was the system, with regard to the nomination of ministers, in operation during the period which elapsed between the abolition of Patronage in 1690, and its revival in 1711?

The system of Patronage (if Patronage it can be called) which existed from the year 1690 to 1711, *and which was in active operation, therefore, at the time the treaty of Union was concluded*, was such that the tribunals of the Church were not, in any instance, liable *even to that pecuniary check upon the freedom of their power*, in the matter of ordination, to which, as your Lordships have seen, she was subjected under the former system. The right of nomination was vested in the elders and kirk-session, and the sustaining of their presentation, or the decisive rejection of their nominee, was left at the *absolute* disposal of the Church, it being declared that the "*affair*" was to be "*cognosced upon*" by her tribunals, "*at whose judgment and by whose determination the calling and entry of a particular minister was to be ordered and concluded.*"

What, my Lords, is the inference I would draw from this fact? Is it that the restoration of the initiative to the "just and ancient Patrons," under the statute of 1711, was *necessarily* a violation of that treaty, which provided that no alteration should be made in the "discipline" or "government" of the Church as it then was ordered? No, my Lords; allowing, as I

am willing to do, that a *mere transfer* of the initiative from the “heritors and kirk-session,” to the “ancient Patrons,” would not have involved any violation of the Church’s rights, I beg your Lordships to remember that the act of Queen Anne, passed in 1711, effected *far more* than such a transfer, and that by it the councils of the Church were again placed under fetters, from which they were free at the period of the Union, and were again “obliged,” under the former penalty of pecuniary loss, to keep within a certain limit in their rejection of presentees. It is impossible, therefore, to avoid the conclusion, that the act of 1711, in the *increase* it gave to the initiatory power, was a direct and unjustifiable inroad upon that “government” and “discipline” of the Church, which, according to the provisions of the treaty of Union, were to be preserved inviolate without *any* alteration.

It does, therefore, appear to me, and I now submit the opinion to your Lordships’ judgment, that, since the whole difficulties of the Church have sprung from a statute which places a restraint upon the freedom of her power, unknown at the period above referred to, and interferes with her giving effect to a principle which was then, and had been for many years before, in such active operation as her unrestricted authority designed it to be,—the Legislature is *placed in debt* to the Church for the modification of that obnoxious statute.

Though, my Lords, the constitutional argument is now ended, and though it has not been my object, in this Letter, to dwell upon considerations of propriety and political advantage, yet, in thus addressing you, and urging upon the PEERS the propriety of an alteration in the existing law of Patronage, I should be unwilling to rest the arguments employed, solely

upon such grounds as have been now adverted to. To do so would imply a belief, which no one can for a moment entertain, that your Lordships are as unwilling to enter into the dispassionate consideration of this subject, as the Moderate party has too often shown itself to be, and to judge it upon principles which, though less capable of absolute demonstration, are in the present case sufficiently decisive, and are equally worthy both of its own importance and of influencing the decision of the British senate.

Powerful are the prejudices which now rise thick against the Church, and numerous are the influences which, through a thousand different channels, contribute each their quota to swell the ranks of her opponents. But as there is nothing in her position which may fear the full strictness of any candid scrutiny, it is not without hope that I would here beg your Lordships to enter seriously and *independently* upon it. There is nothing very monstrous in the Church of Scotland urging upon the Legislature the necessity of altering a statute which prevents her, without destroying the Establishment, from putting in force a principle which has existed in the standards of her discipline ever since the Reformation, and which a vast majority of her office-bearers consider to be essential to the efficiency of her ministrations, and the securing her hold in the affections of those over whose religion it has been given her to preside. Neither, my Lords, would it add any very great amount of iniquity to this demand, even if it were admitted that she now wishes to embody that principle in a form which gives it stronger and more defined effect than any that has been hitherto adopted in the history of her internal government. The determined opposition at present evinced by powerful parties against any modification of the

law of Patronage, which will enable the Church to give the effect she considers to be due, to the wishes of congregations in the appointment of ministers,—an opposition, rather than abandon which, they seem prepared to look with complacency upon her dismemberment,—is the more utterly unreasonable and weak, as one of the objects of that law was professed by the Parliament who passed it, in the preamble of the statute, to be the preventing of “heats and divisions” in the Church.

And let it not be said by those who seem to have entered into a secret covenant with themselves, that nothing shall prevail upon them to abate one inch from this position, that they are actuated by a sincere dread of the consequences likely to ensue from the practical operation of the ecclesiastical rule which bears the much-dreaded name of the “Veto law.” This can hardly be. The basis, at least, of that rule is no other than a principle, which, as before said, has been familiar to the Church of Scotland ever since the Reformation, and which at various periods of her history has been more or less in active operation. Nor would the admission which has been above mentioned, viz. that that rule expresses it in a form more stringent and definite than any which has been in previous operation, materially alter the nature of the case. Can any man, whose judgment is not strangely perverted by influences less just than powerful, for a moment anticipate any evil consequences from such an addition, which could justify the declamatory fulminations so frequently poured forth from high quarters against the dangerous, and,—as some representations would lead us to believe,—the almost revolutionary character of the “Veto law?” No, my Lords;—we are far from the path which leads to the true

springs and causes of that enmity, which,—arising from feelings of different and even opposing natures,—now consolidates the phalanx, which threatens the safety of the Church,—when we turn to canvass fairly the merits and probable effects of the “Veto law.” It is the *principle* upon which that law is founded, and of which it is but a particular manifestation, as well as those upon which the Establishment itself is built, that are the real objects of attack; and it is *these* and *these* alone, which the Church demands, as essential to her constitutional and inherent freedom, and to the due fulfilment of her sacred calling. It is these too, my Lords, which must no longer be withheld from her by the Legislature, if it does not wish greatly to mistake the course which the best interests of the country require it to pursue; or to bring to bear upon the internal peace and prosperity of society, influences for evil which are perhaps but seldom adequately estimated.

It is certainly not my intention to advocate to your Lordships the perfection of the “Veto law,” or of any other form in which the Church’s principle regarding the “induction of ministers” may be embodied. With regard to that principle itself, it seems to be but befitting the right organization of the Church, and no way so very monstrous as the Moderates would have us to suppose, that the wishes of congregations,—liable to be overruled, so far as regards their *animus*, by the judicatories of her spiritual government,—should be allowed to have a very decisive effect in the appointment of ministers; and it is certainly necessary to the integrity of the established constitution, that her tribunals should have unrestricted power, to give them this effect, according to the discipline adopted by ecclesiastical authority. At all events, I would confi-

dently ask your Lordships to contrast the evils which the most heated imagination could anticipate, from the operation of the “Veto law,” with those which have resulted,—and must infallibly result,—from a matter so nearly affecting the peace and welfare of the Church, being held in suspense for years, and laid open to a public discussion, upon which the elements of discord, gathered from the innumerable sources which may be more easily understood than named, are brought to bear with all the violence of an ever-increasing force.

The worse than unprofitable manner in which that discussion has been carried on—the extensive mischief which has resulted from it—does indeed place in a strong light the wisdom of that constitution, which leaves the consideration and determination of such matters solely to the councils of spiritual authority. When exercising their functions in the way which to them seems most fitted for the edification of the people, and the efficiency of their own gospel services, they are best consulting the interests of the State, and fulfilling the great uses of an Establishment. It is therefore as unwise as it is unconstitutional, to enlist in a determined opposition, against the regulations of their internal government, because,—though involving no new principle, but upon the contrary proceeding, upon one which has been *always theoretically, and often practically* recognized,—they do not quite suit the views of those whose only opportunity for interfering at all, or giving any power to their opposition, is afforded them by the provisions of a statute professedly intended to promote the internal peace of the Church; but which they would thus pervert to be the instrument of her destruction as an Establishment.

I believe, however, few of those who are now foremost

in this opposition,* or of the great body which has formed its strength, would ever have yielded it their support, if they had presented the question to their own minds in its native light, and formed their decision in regard to it, after due attention to the great interests involved, and the real nature of the Church's argument and position. But such considerations have been withdrawn from view by the continued operation of a multitude of causes, which,—some of an accidental, others of a more permanent nature,—have effectually succeeded in placing upon a most unworthy basis, the discussion of a subject of great national importance. The spirit of controversy and its continuance, have, as usual, widened the breach between the contending parties, and every month of its duration has served but to narrow the chances of a mutual accommodation. Nor has it been alone the extensive and thorough misunderstanding which prevails as to the laws of the constitution, in regard to the Scottish Church, that has united from heterogeneous materials, the great party which, under the headship of the Earl of Aberdeen, has been led on from small beginnings—from dislike and disapproval of the principle of “Non-Intrusion,” as laid down by the ecclesiastical authority of the Church, to open war against the hitherto recognised, and statute-guaranteed liberty of her councils. Other influences have powerfully aided in its formation; and, startling as the statement may appear to your Lordships, who have seen the noble Earl above-mentioned, and Lord Dunfermline, uniting from adverse positions in the Upper House, in common opposition to, and condemnation of the Church,

* Of course excepting such as are inimical to the Establishment, and join in this opposition as a means of effecting its overthrow.

I do not hesitate to mention as being amongst the most powerful of them all, the *prejudices of political opinion*. Yes, my Lords, mixed as the composition of that party may appear to be,—mingled in its ranks as there certainly are, representatives from all the great political divisions in the State ; *he* would be but a superficial observer of the present state of things, and have but an inadequate estimate of the interests involved in the question which now so nearly affects the existence of the Established Church of Scotland,—of the momentous principles which, in its various bearings, it suggests, and brings under discussion,—and consequently of the numerous channels through which it bears upon political opinion,—who does not at once see through this mixture of parties, and discern amidst it all the obvious effect of influences external altogether to those which should legitimately determine men's judgments in regard to it.

It is the great misfortune of the Church at this moment, that of the two great branches into which the controversy respecting her is divided, her position in regard to the one, renders her obnoxious to many who would agree with and support upon the other, and *vice versa*. Thus numbers, from the most opposite and conflicting views, coalesce in a desire to crush the majority who now rule her councils. If we analyse the composition of the Moderate party (extending this appellation to all who, whether in the Church, in the country, or in Parliament, rally round the war-cry of the “law of the land”) we shall find Tories, nay, even men calling and thinking themselves *Conservatives*, who, for the leaven of democracy contained in the principle of “Non-Intrusion,” are blindly willing to destroy the whole powers and privileges of the Church, and thus to overthrow one of the

greatest and most useful of our national institutions ; and we shall find too, Radicals not a few, with many usually denominated Whigs, who, with much more consistency, and a far clearer insight into the result of their proceedings, join with alacrity in opposition to the Church, and,—willingly passing by anything that might be congenial in the principle of Non-Intrusion, from the power it ascribes to popular dissent,—give full vent to their hatred of those claims to spiritual independence which savour of *priestly* power.

But fortunately for the Church, she is not under the necessity of meeting her adversaries upon all the various grounds which give rise to their common opposition ; for, come from what quarter they may,—from the east, or from the west, from the north, or from the south, they are all found to congregate round that point of universal resort,—the charge of disobedience against the “ laws of the land.” And assuredly, my Lords, if noise and clamour were of any weight in the scales of judgment, the charge of political delinquency, so unsparingly brought against the Church of Scotland, would long ere this have been conclusively established.

Before finally committing to your Lordships’ judgment the arguments which have been before advanced in favour of the Church of Scotland, I may be allowed to say a few words upon the manner in which the subject has been hitherto brought before your notice. Having frequently had the honour of being present in your Lordships’ House when debates, or rather desultory discussions, have arisen upon the “ Scottish Church question,” I do not hesitate to repeat (though with respect to the noble Lords to whose speeches I refer) in regard to *them*, the assertion which has been so frequently made in the previous pages, in regard

to all the reasonings of the Moderate party. I do not fear to say, that *never* do we see the opponents of the Church's cause fairly meeting in the face the arguments which are brought against them, or entering into the discussion of her position in any adequate or worthy manner. Evasion, continual evasion of all the *fundamentals*, and busy and ingenious remark upon the *superficials* of the question, has been their strength and only refuge; and, go where we will, we find nothing to support the charges of *rebellion*, but strong and unwarrantable *assertion*, a total suppression of all the laws of the land which bear upon the case, and no very profound views upon subjects of constitutional principle. I should be content, my Lords, to rest the truth of this position on what has been already advanced; but as a farther illustration of its truth, and one which came more immediately under your Lordships' notice, I would refer you to a remarkable debate which took place in the Upper House immediately before the dissolution of the late Parliament, and,—to specify more particularly that to which I refer,—to the speech of the evening,—the speech of Lord Brougham.

The discussion arose upon one of those frequent occasions upon which the Earl of Aberdeen was wont to upbraid the Noble Viscount who was then in power, for neglecting “*to put in force the law*,” and for failing to crush the dangerous rebellion in which the Church of Scotland had engaged. It would have been perhaps easy for the Noble Viscount to have vindicated himself from the charge of *misprision of treason*, and to have shewn that, in refusing to support with executive power the claims of the Lords of Session, to exercise a despotic command over the councils of spiritual authority in

spiritual matters, he had not been betraying his trust, as responsible adviser of a Sovereign who has engaged to maintain the established constitution of the Church of Scotland. This would have been no very heavy task ; but it certainly was a little more difficult to show how it could be consistent with the duty of his Government to remain in a state of careless and absolute inactivity, when one of the great leading institutions of the country was placed in circumstances of difficulty and danger ; and to resign to those who might have public spirit enough to take it upon themselves—the task of urging in Parliament the necessity of legislative interposition. Yet some defence or explanation of this inactivity,—short of acknowledging that he “ held the place, without possessing the power, of Government,”—it was, of course, necessary for the Noble Viscount to give to your Lordships’ House, when pressed by the attacks of the Earl of Aberdeen. Accordingly, he generally represented in strong terms the great difficulty of interfering in the conflict between the courts of civil and ecclesiastical authority ; and enumerated the considerations which are urged in support of both the contending parties, with such a show of alternate favour to each, as might help to convince your Lordships, that neither the one nor the other was so clearly in the wrong, or so clearly in the right, as to enable the Government to decide upon the course, which the interests of the country required it to adopt.

The part which the Noble Viscount had thus to play, was extremely difficult ; for, in acting in the capacity of an unwilling advocate, first of the one cause, and then of the other, in order to preserve the equality of balance, indispensable for his purpose, he necessarily involved himself in confusions and contra-

dictions, which it was sufficiently easy to expose. Upon the occasion to which I now wish particularly to refer, Lord Melbourne, in answer to the remonstrances of the Earl of Aberdeen, made a truly characteristic speech, conceived on the plan above described. The Noble Viscount began by stating to the House two courses which he said had been open to the adoption of the Government, and concluded by giving your Lordships to understand, that—for the reasons usually assigned, it had resolved to avoid them both. Unfortunately for your Lordships' right estimation of the position and principles of the Church of Scotland, Lord Melbourne had been that night constrained, by the tone of the debate, and in order to vindicate himself from the charge of having failed to *put in force the law*,—to act at greater length than usual, in the capacity of her advocate. But, of course, it formed no part of the Noble Viscount's object to carry the Church's defence so far, as would condemn himself for not having taken a more active part in inducing the Legislature to interfere in her behalf. This would have been, in avoiding Scylla, to have run upon Charybdis. The consequence was, as might have been expected, that the Church of Scotland's cause suffered most grievously in his hands, and that he involved himself in a mass of desultory and contradictory observations, which, whilst they utterly failed to place in a more favourable light the conduct of his own Government, must, with such of your Lordships as attended at all to the debate which followed, have succeeded in giving and confirming a most fallacious view of a question of deep interest and importance.

Lord Brougham answered the Noble Viscount in a speech, which affords an excellent example of the way

in which causes may be made to suffer in the eyes of men, through the medium of their ostensible supporters; and in which a *victory in dispute* over particular individuals, may sometimes wear all the aspect of a *victory in argument* over the most just and sound principles. It was a speech, in which he exposed with eloquence and success the glaring inconsistencies into which Lord Melbourne had fallen, and urged upon your Lordships his own condemnatory opinion of the Scottish Church. But what, my Lords, was the basis upon which he rested his accusations of rebellion and disobedience? Did he appeal to the records of constitutional principle, and to the laws upon which the Establishment is founded? Did he go to the statute book, and read from its pages the ground-work of his argument? Did he even rest it upon general laws and inferences which can bear a moment's investigation? No, my Lords, *two sentences picked out from Lord Melbourne's contradictory and ill-digested observations*, furnished Lord Brougham with the only successful part of his argument, and the *only* ground-work upon which he could rest his charges against the Church, of rebellion and disobedience.

In that part of the Noble Viscount's speech, which had been allotted to his semi-defence of the Church, he had spoken of her situation in regard to the Court of Session, as an instance of violent "collision" between two great bodies in the State; whilst, in that part of his speech which was devoted towards maintaining the balance on the other side, he made a remark indicating his opinion, or admission (!) that the Church and the Supreme Court of Law in Scotland could not be called *co-ordinate jurisdictions*; this was, of course, an opportunity which could hardly have escaped the observation of a less able debater

than Lord Brougham, who, accordingly, did not fail to expose, in a powerful manner, the obvious inconsistency of Lord Melbourne's statements, and altogether the superficial nature of his arguments. "The Noble Viscount has admitted," said Lord Brougham, "that the two jurisdictions are not *co-ordinate*, and yet he has spoken of them as in a state of *collision*. But, my Lords, there can be no '*collision*' between jurisdictions unless they are co-ordinate."

Lord Melbourne was here vanquished; but assuredly the cause of the Church was in no way overthrown. After the length at which I have treated of this subject, I trust it is unnecessary for me here to dilate upon and expose the ingenious stratagem by which Lord Brougham thus contrived to start his argument against the Church, without being put to the necessity of hazarding a doubtful attack upon that which forms the strength of her position, and renders it impregnable. I shall not, therefore, enter either into an inquiry as to the truth of the admission made by Lord Melbourne, and his right to make it, or into a dispute with Lord Brougham, as to the meaning of the word *co-ordinate*. It is quite sufficient for my purpose to remind your Lordships, that there exist a crowd of statutes, which declare that the office-bearers of the church possess *an inherent and supreme authority in matters spiritual*;—that "collation and admission of ministers" are particularly specified as among these "matters;"—that there is in the statute book *no law which is "prejudicial to" or derogates from*, the essential privilege to which that authority belongs;—that the Court of Session has had no power given it to exercise dominion over the councils of the Church, in the affairs of her internal government;—that in usurping that dominion, it has not only vio-

lated the law to which it owes its own existence, and which limits the extent of its authority, but has set at nought the most primary principles of the constitution, and thereby produced “confusion in all estates;” and, finally, and consequently—that the Church is not only *not subordinate* to, but inherently and constitutionally independent of, the Court of Session, in those matters wherein the Moderates would fain have us to believe that she has *disobeyed it*.

Leaving then, my Lords, Viscount Melbourne *to make*, and Lord Brougham *to make use of*, the *admission*, that powers, which have had separate parts assigned them, in the organization of the State, and one of which has been declared by the laws to be inherently independent of the other, are not *co-ordinate jurisdictions*, I would intreat your Lordships to examine *for yourselves*, the question which affects the Church of Scotland; and in no way to delegate the formation of your opinion to those who have been accustomed to discuss it in your Lordships’ House. Unless you adopt this course, there is much danger that upon a subject of deep national importance, and one which involves the faith of treaties, the voice of truth, amidst the warped representations of keen and angry feeling, and the flimsy triumphs of debate, may be unheard or overborne.

To you, my Lords, who hold in Scotland the rights of patrons, allow me to address one word in concluding this Letter. It is for *you* now to determine upon what grounds you will rest the defence of Patronage. There has always been a strange conflict maintained, even in the Acts of Parliament, which provide for its existence, between that view which regards it as a right of civil property, and that which regards it as a regulation for promoting the welfare of the Church;

and we see throughout its history since the Reformation, manifest evidence of the consciousness which has been always felt, that in the latter light,—and the latter light alone, it is really defensible. To the honour of the Scottish Parliaments, who were engaged in ordering the Church Establishment of their country, this consciousness was allowed to produce such practical effect, as to prevent the “rights of Patrons” from interfering with the freedom of the Church’s government, and the general due destination of her Patrimony. For some time previous to the Union it did not exist at all ; and the time is now come when it must be distinctly understood upon what foundation it is to rest, as restored in 1711. The views which are now but too prevalent in regard to it, place it upon a footing which is wholly inconsistent with constitutional principle ; and it is for you, my Lords, to determine whether you are ready to uphold it as a right of property, incompatible with the integrity of the Church’s power, and the efficient disposal of those endowments which have always been scanty, and are now wholly inadequate to the extent, and befitting extension of her labours. An uncompromising adherence to the present law of Patronage, without any modification, such as to enable the Church to give effect to the principles which she now deems essential to her usefulness, will assuredly represent it in this light, and reduce to mere mockery the ground upon which its restoration was ostensibly justified by the Parliament of 1711.

I would now beg your Lordships to consider well the consequences which must be entailed by the adoption of such a course. This is not the time when we can safely multiply the ranks of religious division and dissent. Above all, this is not

the time when we can safely tamper with the great leading institutions of the country, and give strength to the numerous enemies who surround them ; neither is it the time, when cotton mills are pouring forth their thousands, and at once fearfully increasing the amount, and deteriorating the condition of our population, that the established channels of religious instruction, may, with impunity, be interrupted or destroyed. But *it is time*, and full time too, that this unhappy conflict should be stopped, ere it assume in reality the character which Dr Chalmers has already—I trust prematurely—given it, of “a contest between the civil rights of certain individuals, upon the one hand, and the highest moral interest of the community on the other.”

I am,

MY LORDS,

with much respect,

your obedient servant,

A PEER'S SON.

Letter to the Peers, from a Peer's son, on the duty and necessity of
immediate legislative interposition in behalf of the church of Scotland,
as determined by considerations of constitutional law

Edinburgh 1842

H.ref. 259 o-3#Beibd.31

urn:nbn:de:bvb:12-bsb10450129-1